

Mechanical Steno - Computer-Aided Transcript

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P R O C E E D I N G S

THE CLERK: You may be seated. Court is now in session.

THE COURT: Good morning, jurors. Welcome back. I hope you had a pleasant weekend. We're ready to resume. The government will call its next witness.

MS. WRIGHT: The government calls Laura Janke.

(Laura Janke, sworn.)

THE CLERK: And would you please state your name for the record, spelling your last.

THE WITNESS: Laura J-a-n-k-e.

DIRECT EXAMINATION OF LAURA JANKE

BY MS. WRIGHT:

Q. Good morning, Miss Janke.

A. Good morning.

Q. Let's go into your background just a little bit. Can you tell us where you live?

A. I currently live in North Hollywood, California, which is part of Los Angeles County.

Q. Do you work?

A. Yes, I do.

Q. What do you do?

A. I do tax assembly and preparation, along with some bookkeeping. I also help a company doing scheduling and appointments, and I also help coach a small soccer team for my

1 5-year-old daughter.

2 Q. Where did you work prior to your current employment?

3 A. I worked at Geffen Academy at UCLA. It's a middle school
4 and high school.

5 Q. Why did you leave that job?

6 A. I left that job because I was fired due to -- I was fired.

7 Q. Why were you fired?

8 A. Due to my involvement in pleading guilty.

9 Q. And when you say you pled guilty, what crime did you plead
09:11 10 guilty to?

11 A. I pled guilty to RICO conspiracy.

12 Q. When was that approximately?

13 A. I pled guilty in May of 2019.

14 Q. Can you tell the jury what you did that led you to plead
15 guilty.

16 A. Yes. During my time of working at USC, myself and my boss
17 were taking students from Rick and we were putting them in as
18 athletes into our program, even though they were not and they
19 were not going to play on our team.

09:12 20 After I finished working at USC, I still continued to
21 work for him and I helped other students get in as athletes and
22 I also created false profiles for him for his students and I
23 was paid in return for that.

24 Q. When you say "Rick," that's Rick Singer?

25 A. Correct.

1 Q. Okay. We'll come back to that in a few minutes. I want
2 to just talk a little bit more about your background. Can you
3 tell us where you were born?

4 A. Yes. I was born in Thousand Oaks, California.

5 Q. How far did you go in school?

6 A. I received my master's in kinesiology.

7 Q. And where did you go to school?

8 A. I went to California State University, Fullerton.

9 Q. How did you end up there?

09:12 10 A. I ended up there -- I knew that I wanted to play soccer in
11 college and during my junior year I was going through the
12 recruiting process and the assistant coach at Fullerton, who
13 had been recruiting me, came out to actually watch one of my
14 high school games. And he actually came to watch the other
15 keeper, goalkeeper. I was -- my position was goalkeeper. And
16 I ended up playing in that game, and he liked my talent level
17 and decided to recruit me, and I went through the recruiting
18 process and then decided to go and play athletics and be a
19 student at Cal State, Fullerton.

09:13 20 Q. Who was the coach that recruited you to play at Cal State,
21 Fullerton?

22 A. His name is Ali Khosroshahin.

23 Q. Did you end up playing soccer all four years of college?

24 A. I did, yes.

25 Q. And after you graduated from Cal State, Fullerton, what

1 did you do?

2 A. So after I initially graduated my undergraduate, I stayed
3 at Cal State, Fullerton as a graduate assistant coach for the
4 soccer program and received my master's. After that I went
5 into a sales job just for a couple months. I decided that
6 sales wasn't for me. My passion was working with children and
7 I decided I was going to go to nursing school and started
8 applying to nursing schools. I wanted to be a pediatric nurse.

9 And then I received a phone call from Ali, who I had
09:14 10 played for and worked for as a graduate assistant, and he told
11 me that he got the job at USC and asked me to come and be a
12 part of the staff there instead of going to nursing school.

13 Q. And when you say Ali got the job at USC, what job was
14 that?

15 A. He received the head women's soccer coaching position.

16 Q. And he asked you to come join the staff?

17 A. Yes, he did.

18 Q. In what position?

19 A. He asked me to come join the staff as an assistant head
09:14 20 coach -- sorry -- as an assistant coach, and I would work
21 primarily with the goalkeepers.

22 Q. And when did you go to USC to join Ali?

23 A. Ali asked me to join him in January of 2007, however, I
24 didn't join him until February of 2007 because I was coaching a
25 junior varsity high school team and I wanted to finish my

1 commitment to them.

2 Q. So after you went to USC in February of 2007, can you just
3 tell us a little bit about what your role was on the coaching
4 staff?

5 A. Yeah. So my primary role was mostly just working with the
6 goalkeepers. That was the position that I played. And so
7 working with the goalkeepers, recruiting of some goalkeepers,
8 and then my biggest role was probably off the field doing all
9 the operations, from travel to working with the student
09:15 10 athletes off the field, checking out, making sure that they
11 were just being responsible student athletes.

12 Q. And you mentioned having a little bit of involvement in
13 recruiting, primarily with goalkeepers, you said?

14 A. That's correct.

15 Q. At some point did you come to have more involvement in
16 recruiting on the team?

17 A. Yes, I did.

18 Q. Can you tell us a little bit more about that?

19 A. Yeah. So -- so, recruitment wise, I would, in the soccer
09:16 20 world, you can find tournaments every weekend to recruit at.

21 And so I was involved with the process from getting e-mails
22 from potential students that wanted to play at the University,
23 looking over their resumes, talking to club and high school
24 coaches about them, and then we would actually go to the field
25 and would go to tournaments on the weekends. We would watch

1 the students play. And we would decide if we -- we'd watch
2 them multiple times and decide if they might be a fit for our
3 program. And we would continue that conversation with their
4 club coaches and would communicate with them, if we were
5 allowed to, by the NCAA guidelines, and communicate with them
6 and try to get them to want to commit to our university.

7 Q. And did you recruit both scholarship soccer players and
8 walk-ons?

9 A. Yes, we did. We recruited anybody that was playing on our
09:17 10 team. We went and recruited and watched them.

11 Q. Can you tell us the difference between a recruited
12 scholarship athlete and a recruited walk-on?

13 A. Yeah. In my experiences for our team, the biggest
14 difference was that a scholarship athlete received money from
15 the university to play on the team and a recruited walk-on did
16 not receive any money to play for various reasons, but both of
17 them were still valued and could make an impact on our team.

18 Q. Have you heard the term "practice player" before?

19 A. Yes, I have.

09:18 20 Q. What does that mean to you?

21 A. So, for us, again, with my experience, we wouldn't -- we
22 would -- we would use the term "practice player" amongst
23 ourselves as coaches and -- but we never used it specifically
24 when talking to an athlete, but for us, whether you were --
25 even if we, as coaches, talked about you as a practice player,

1 it still meant for us that you were a recruited walk-on. You
2 were still expected to be at every practice, at every game, at
3 every team event. You were on the team and you were recruited
4 in our mind.

5 Q. And when you coached at USC, did you ever recruit team
6 managers?

7 A. No, I did not.

8 Q. So once you had gone through this process and identified
9 your recruits for the year, what did you do next?

09:18 10 A. So once we had identified our recruits and once they had
11 also made a commitment to us that they wanted to play for us,
12 we would put together information on them, such as we would get
13 all information together, test scores, transcripts, player
14 profiles, and we'd put that together so that we could then
15 present them to Admissions Subcommittee.

16 Q. And who did you provide that information to?

17 A. We would provide that information to Donna Heinel.

18 Q. And you were talking a little bit about practice players
19 and walk-ons. Did you ever present a player to SUBCO as a
09:19 20 practice player?

21 A. No. So our players would go as they were still recruited
22 walk-ons. So, for us, it was the same thing. We expected
23 everybody there to make an impact on our team.

24 Q. At some point after you started coaching and you got more
25 involved in recruiting, did you become familiar with an

1 individual named Rick Singer?

2 A. Yes, I did.

3 Q. Can you tell us a little bit about that?

4 A. Yeah. So the head coach I worked for, Ali, had met Rick
5 Singer and spoke with him, and Rick spoke with Ali about using
6 soccer to help his students gain admittance into the
7 university.

8 Q. Did Ali say that this was going on at USC?

9 A. Ali told me that there were other coaches that had been
09:20 10 doing it and so that it was -- it had been done, yes.

11 Q. Did Ali mention any specific coaches?

12 A. Yes.

13 MS. PAPENHAUSEN: Objection.

14 THE COURT: She can answer whether she mentioned any
15 specific coaches. That question is all right. She can answer
16 it.

17 A. Yes, he did.

18 Q. Who did he mention?

19 A. He mentioned Jovan Vavic.

09:20 20 Q. Who was that?

21 A. That was the men's and women's water polo coach at USC.

22 Q. What happened after Ali told you about this arrangement
23 with Rick Singer?

24 A. So after that we would get possibly one or -- Rick would
25 reach out to us and give us one to two students of his and we

1 would start the process to admit them as an athlete into our
2 program despite the fact that we actually hadn't recruited them
3 or spoke with them.

4 Q. And how -- if you had never seen them or spoken with them,
5 how did you go about presenting them as recruits?

6 A. We basically would take a player profile that was given to
7 us and we had to put it into the format that we used and gave
8 to Donna Heinel for our other student athletes. We would
9 basically take bits of information from their profile, and then
09:22 10 we also had to write a paragraph on them. So that paragraph
11 was made up by myself, and it was made up, and so we tried to
12 make it sound like they would be a benefit to the team and make
13 an impact on the team by certain verbiage we would use or
14 things within the paragraph.

15 Q. And you mentioned that Rick would send you the initial
16 draft of the profile?

17 A. Yes.

18 Q. Did you have an understanding of where that came from?

19 A. I did not, but once again --

09:22 20 MS. PAPENHAUSEN: Objection. Your Honor, she just
21 responded I did not.

22 THE COURT: Yeah. She answered the question.

23 Q. Do you know whether the information in the profile that
24 Rick sent to you was true or false?

25 MS. PAPENHAUSEN: Objection.

1 A. I did not.

2 THE COURT: She can answer whether she knew it was
3 true or false.

4 A. No, I did not.

5 Q. And you mentioned that you hadn't spoken with these
6 students or seen them play. Did you know anything else about
7 them?

8 A. No.

9 Q. Did you ever talk to their coaches?

09:23 10 A. No.

11 Q. Did you know if they even played soccer?

12 A. No.

13 Q. And did any of them end up playing on the USC women's
14 soccer team?

15 A. No.

16 Q. What did you and Ali Khosroshahin get in exchange for
17 doing this?

18 A. We were paid money.

19 Q. How much approximately?

09:23 20 A. Approximately \$50,000 every student.

21 Q. And would you and Ali have recruited any of those students
22 but for the payments?

23 A. I wouldn't have even known who the students were, so no.

24 Q. Could you tell us a little bit about where that money,
25 that \$50,000 per student, went and what you used it for?

1 A. Yeah. So, initially, that money went into -- for the
2 women's soccer program, and we would use that money for -- we
3 could use it for equipment, anything that was above our school
4 budget. So we could use it for that purpose, but, primarily,
5 we did take our team on a European trip one summer and so we
6 used that money to help fund that trip.

7 Q. Was it part of your job as a coach at USC to fundraise for
8 the soccer team?

9 A. Ali always said to me there was two ways to keep your job
09:24 10 at USC. It was to win or it was to bring in money, but I
11 never -- other than Ali, never specifically had conversations
12 with anybody about fundraising.

13 Q. And in your experience in recruiting soccer players, did
14 fundraising play a role in recruitment?

15 A. No. We always looked at a student to see what kind of
16 impact they could make on the team and if they could help us be
17 successful on the team.

18 Q. You mentioned that at first these payments from Rick went
19 to the USC women's soccer program. Did that change at some
09:25 20 point?

21 A. Yes, it did.

22 Q. Can you tell us about that?

23 A. Yeah. So at one point the money stopped going to the
24 women's soccer program and it transitioned over to what was
25 called The Football Academy. And the money would go into there

1 instead.

2 Q. What was The Football Academy?

3 A. The Football Academy was a separate business account that
4 was set up to -- for us to run camps during the summer and
5 throughout the year at USC and so it was a separate business
6 entity.

7 Q. And can you explain a little bit about what the purpose of
8 the camps are?

9 A. So, as a coach at USC, we would run summer camps and we
09:25 10 would run identification camps throughout the year. There's
11 two purposes for the camps. One is it can help you see
12 students. It can help you get to know them and they get to see
13 your campus as well if you're recruiting them, and they get to
14 know you as coaches on a different level because they're
15 actually training with you at a camp.

16 The second purpose is the camps help coaches make
17 extra money and help pay volunteer assistants. So it's also a
18 money maker.

19 Q. So the money that Rick Singer paid to you and Ali that
09:26 20 went to the camp, what was that money used for?

21 A. That was used to -- well, ultimately, it was used for Ali
22 and myself to make more money.

23 Q. Did you have an understanding of whether others at USC
24 were aware of what you and Ali were doing?

25 MS. PAPENHAUSEN: Objection.

1 THE COURT: Give me the question again.

2 Q. Did you have an understanding of whether others at USC
3 were aware of what --

4 THE COURT: She can answer whether she has an
5 understanding.

6 A. To my knowledge, nobody else did.

7 Q. Anyone in Admissions?

8 A. No.

9 Q. What did you understand your responsibility to be as a
09:27 10 coach with respect to recruiting?

11 A. So my responsibility as a coach was to, first and
12 foremost, find student athletes that were going to make an
13 impact on our team; student athletes that could contribute to
14 our team, both on and off the field, and student athletes that
15 were going to come in and work hard for the team, represent the
16 university with pride, and just be responsible people.

17 Q. Did there come a time when you left USC?

18 A. Yes, I did.

19 Q. Can you tell us how that happened?

09:27 20 A. Yeah. So Ali was eventually let go from the university
21 for various reasons and I was kept on for a few months.
22 Eventually, I was let go by the coach that they brought in to,
23 the new head coach of the team. And, typically, in the college
24 coaching world, when a new head coach comes in, they bring
25 their coaches with them and so I was let go at that time.

1 Q. And when was that approximately?

2 A. January of 2014.

3 Q. Did you continue to work with Rick Singer after you left
4 USC?

5 A. Yes, I did.

6 Q. How did that come about?

7 A. So during the time, the last year that I was at USC, we
8 had two of Rick's students that we were trying to get into the
9 program still. One of them had been admitted already and the
09:28 10 other had not been admitted yet. So I continued to help get
11 that student in and then some future students also.

12 Q. So let's start with the first student you mentioned that
13 kind of started the process. What was her name? Do you
14 recall?

15 A. Are you referring to the first student that got in before
16 we left, or like after we left?

17 Q. The one that you just mentioned who you had started the
18 process, but she had not yet made it through at the time you
19 left.

09:29 20 A. Okay. Her name was Amanda Feiwell.

21 Q. And you said so you continued to work to try to get her
22 in. Why did you do that?

23 A. Ali had reached out to me and said that we really needed
24 to get her in still. And so I felt like I owed it to him to
25 continue to help him and also, in return, we were still going

1 to get paid for doing this.

2 Q. So if you were no longer at USC, how did you go about
3 trying to usher her through the process?

4 A. So I had a relationship with Donna Heinel. I reached out
5 to her and gave her the scenario that we had been trying to get
6 her in, we couldn't get her in, and if she got in, that her
7 family was going to be giving money to the women's soccer
8 program and asked if she could still help get her in. Then the
9 funds could go to Donna Heinel instead.

09:30 10 Q. And you say to Donna Heinel -- what do you mean? The
11 funds go to Donna Heinel. What do you mean by that?

12 A. So they would go to Donna Heinel at USC to whatever
13 program or funds she wanted them directed to.

14 Q. What was the outcome with Amanda Feiwell?

15 A. She was admitted into USC and her parents did pay money.

16 Q. Do you recall acting in this kind of liaison role with
17 Donna Heinel at any point after Amanda Feiwell?

18 A. Yes. I did with another student after that.

19 Q. Can you tell us a little bit about that.

09:30 20 A. Yes. So I believe it was the following year that I got a
21 call from both Rick and Ali asking me to help with another
22 student named Jaeger Hodge. His sister, Macall, had
23 previously --

24 MR. KELLY: We're going to object again, your Honor.

25 THE COURT: Sustained.

1 Q. Can you tell us how you became aware of Jaeger Hodge?

2 MR. KELLY: Objection.

3 THE COURT: No. She can say that.

4 A. His sister Macall had previously come in under soccer as
5 one of Rick's students.

6 Q. And who reached out to you about the younger brother,
7 Jaeger?

8 A. Rick Singer.

9 Q. And what did you do for Jaeger Hodge?

09:31 10 MR. KELLY: Objection. Relevance.

11 THE COURT: Overruled.

12 You may answer.

13 A. I reached out to Donna Heinel and asked her if she would
14 be willing to put him through athletics to gain admissions, and
15 she said yes and started that process.

16 Q. And how did he go through athletics?

17 A. I sent her two player profiles of him, one for tennis and
18 one for football, and she ended up presenting him as a football
19 athlete, and he was admitted to the University as a football
09:32 20 athlete.

21 Q. Were the profiles that you created for Jaeger Hodge
22 accurate?

23 A. No. I had falsified them.

24 Q. And was there a financial discussion or agreement about
25 this, about Jaeger Hodge?

1 A. Yes. So once he was in, his family gave money to the
2 Women's Athletic Fund, which was run by Donna Heinel.

3 Q. And what did you get out of it?

4 A. I received money, as well.

5 Q. Do you remember how much?

6 A. There was approximately \$50,000 that went to the Football
7 Academy that Ali and I split.

8 MS. WRIGHT: Okay. Miss Lewis, if we could pull up
9 Exhibit 693, for the witness only, please. Thank you.

09:33 10 Q. Miss Janke, do you recognize this document?

11 A. Yes.

12 Q. What is it?

13 A. It's a --

14 MR. KELLY: Further objection under *Petruziello*, your
15 Honor.

16 THE COURT: All right. The objection is noted.

17 A. It's an e-mail from myself to Rick Singer.

18 Q. What's the date of the e-mail?

19 A. March 17, 2015.

09:33 20 Q. And the subject?

21 A. "Jaeger."

22 MS. WRIGHT: Government offers it.

23 THE COURT: It will be admitted.

24 (Exhibit 693 admitted into evidence.)

25 Q. So here you say, "Hey Rick, I just got this message from

1 Donna". So you're passing on a message you received from Donna
2 Heinel?

3 A. Correct.

4 Q. "Jaeger's admission packet will be mailed on March 24th.
5 After the packet is received, please let the father know to
6 send the check directly to me at USC, make out to what we had
7 discussed before. Thank you!"

8 When she says, "make out to what we had discussed
9 before," what had you discussed before?

09:34 10 A. So, previously, she had discussed with me about having the
11 payment go to the Women's Athletic Fund, which was a fund that
12 she oversaw.

13 Q. Do you recall any discussion with Donna as to whether
14 Jaeger Hodge would be joining the USC football team?

15 A. No.

16 Q. And to your knowledge, was the USC football coach involved
17 in this at all?

18 A. No.

19 Q. Did you continue to work with Rick Singer after getting
09:35 20 both Amanda Feiwell and Jaeger Hodge admitted to USC through
21 Donna Heinel?

22 A. Yes, I did.

23 Q. How did that come about?

24 A. So there was one other student that he had asked me to
25 look into that I looked into for. And then, after that, I

1 continued to create false profiles for students of his.

2 Q. How did you make that arrangement with Rick to continue
3 making false profiles?

4 A. So I spoke with Ali Khosroshahin and he had told me that
5 he had spoke with Rick and told Rick that I could make profiles
6 for him and received an e-mail from Ali also -- basically
7 saying that he had spoke with Rick and he wanted to continue to
8 use me to make profiles. While I was working, Rick actually
9 came to my job and he spoke with me about helping him for a
09:36 10 different business that he wanted to try to set up. And at the
11 end of that conversation, he asked me about continuing to
12 create profiles for him, and I said yes, just send me whatever
13 information I need.

14 Q. And that other business idea that Rick Singer mentioned to
15 you, did that ever go anywhere?

16 A. No, it did not.

17 Q. And what did you get in exchange for agreeing to continue
18 making profiles?

19 A. I received money.

09:36 20 Q. Approximately how much, total?

21 A. A couple thousand dollars.

22 Q. Were all of the profiles that you created for USC?

23 A. No, they were not.

24 Q. What other schools did you create profiles for?

25 A. I also created profiles for UCLA, Stanford, and Yale.

1 Q. And for Yale, do you recall what sport those profiles were
2 for?

3 A. Yes. They were for soccer.

4 Q. And what about UCLA?

5 A. UCLA was for soccer as well.

6 Q. Okay. Can you just tell us a little bit about how it
7 worked when Rick had a profile for you to create.

8 A. Yeah. So Rick would send me an e-mail giving me basically
9 the student's name and the sport and possibly the position that
09:37 10 he wanted me to create this profile for. In the beginning, he
11 would sometimes give me a little bit more information, such as
12 maybe team or one or two awards, but even if he did that, I
13 still had to fill in and come up with other accolades for the
14 student.

15 And then, eventually, like I said, he would just give
16 me the name and the sport that he would want and I would
17 basically take the student's -- that sport information. I
18 would always, on a profile, put the generic information, name,
19 address, GPA, test scores. Then I would take -- from there I
09:38 20 would take the student's high school that they played at and I
21 would Google everything else. And I would look at the high
22 school that they played for and I would try to match up --
23 basically, if the school was part of XY and Z conference, I
24 would try to find awards that correlated with that XY and Z
25 conference. And I would take those that didn't pertain to that

1 student and I would still fill them in there.

2 And then I would do the same for the club sport. I
3 would find a club team that was in the area where the student
4 lived and I would use that team. And I would also try to find
5 tournaments or other awards that could be associated with that
6 club team, and I would once again take those, which didn't
7 pertain to that student, and I would put them all in the
8 profile.

9 Q. You mentioned the high school that they played for. Did
09:39 10 you have an understanding one way or the other whether these
11 kids played the sport in high school?

12 A. I did not. Sometimes I could Google -- I would Google the
13 student's name and no information would come up on that. So
14 what I knew, regardless of whether they actually were playing
15 that sport or not, they weren't at the level to be able to play
16 at that division of athletics and I was going to have to fill
17 in and falsify information no matter what.

18 Q. In addition to the athletic information you put on the
19 profiles, you put photos as well?

09:39 20 A. That's correct.

21 Q. And how did you get the photos?

22 A. So sometimes a photo was forwarded to me from Rick and
23 other times I just Googled and found a photo of anybody doing
24 that sport online and I would put that photo in.

25 Q. Of course, you had made these soccer profiles before in

1 your role as a coach. How did you make the profiles for sports
2 you weren't as familiar with?

3 A. So, initially, the sports I wasn't as familiar with is I
4 could find, like, sample profiles online and look at those to
5 kind of determine what needed to be used. And as the process
6 went on and once I already had a profile for a sport, if I had
7 to use that sport again, I could go back and use a very similar
8 format to what I had already been using for that sport.

9 Q. What did you do with the profiles once you completed them?

09:40 10 A. I would take them and I would send them to Rick Singer and
11 see if there were any changes that needed to be made.

12 Q. Did you have an understanding of what Rick Singer did with
13 the profiles once you sent them to him?

14 A. No.

15 Q. Then how did you know that they were being created for a
16 specific university?

17 A. Because sometimes he would tell me the university that
18 they were for or sometimes in the e-mail to me, maybe in the
19 headline it would say "USC water polo" or he might say, "I need
09:41 20 this profile for Yale." So a lot of times he would tell me.

21 Q. Let's go through an example.

22 MS. WRIGHT: Miss Lewis, if you could please pull up
23 Exhibit 694, for the witness only.

24 Q. Miss Janke, do you recognize this document?

25 A. Yes.

1 Q. What is it?

2 A. It's an e-mail from myself to Rick Singer.

3 Q. What's the date?

4 A. September 23, 2015.

5 Q. And the subject line?

6 A. "Waterpolo 3".

7 MS. WRIGHT: Government offers 694.

8 THE COURT: It will be admitted.

9 (Exhibit 694 admitted into evidence.)

09:42 10 MS. WRIGHT: Okay. Miss Lewis, if we can go down to
11 the bottom e-mail in the chain, please, and pull that part up.

12 Q. So, actually, the bottom e-mail appears to be an e-mail
13 that Rick Singer had forwarded to you from someone named
14 Lawrence Feiwell; is that right?

15 A. Correct.

16 Q. And attached there is a photo of what appears to be a girl
17 playing water polo?

18 A. Correct.

19 Q. And Rick says to you, "Laura, can you do a profile for
09:42 20 Vanessa Feiwell for water polo. I will send info today.
21 Charge me whatever you want. Jovan and I have already spoken".

22 Can you remind us who Jovan is?

23 A. Jovan, at the time, was the water polo coach for men and
24 women at USC.

25 MS. WRIGHT: Miss Lewis, if we can go to the top

1 e-mail, please.

2 Q. You respond, "No problem. I will make a regular profile
3 and also the type I used to make at USC so Jovan can have his
4 pick".

5 What did you mean by a regular profile and the type
6 you used to make at USC?

7 A. So the regular profile was referring to is where you put
8 the student's generic information and then I would put just
9 their accolades from -- the accolades I found from high school
09:43 10 and club, and I was referring to the type I used to make when I
11 was at USC. We would take the profile and put a little bit of
12 information, but then we would write a paragraph pertaining to
13 that person.

14 Q. Here, you say, "Here is the info I will need", and you
15 list a number of items, including date of birth, phone,
16 address. Down here, do you see where it says "Position:
17 Assuming GK (correct?)"

18 What did you mean by that?

19 A. So based off of that picture that was forwarded, it looks
09:44 20 like a goalkeeper playing water polo, but I had no way to be
21 certain since I had never met this person or actually knew
22 anything about them.

23 Q. Then you see where you say "club team if any"?

24 A. Yes.

25 Q. What did you mean by that?

1 A. So I just meant that if they were playing on a club team,
2 could he provide me with that information because if they
3 weren't, then I was going to have to Google and find a club
4 team in that area.

5 Q. And then, at the bottom there, you say, "I can add in any
6 awards, et cetera, if she does not have any"?

7 A. Yeah. So, again, same thing if -- I didn't actually know
8 if she played the sport or not, so if she played it at some
9 sort of level, if there were any awards that she had, I could
09:44 10 add that into the profile along with anything else I was going
11 to add. Or if she didn't, then that meant that I was going to
12 make up all of the awards and everything in it.

13 MS. WRIGHT: Miss Lewis, if we can now pull up
14 Exhibit 695, again for the witness only. Thank you.

15 Q. Miss Janke, do you recognize this document?

16 A. Yes.

17 Q. What is it?

18 A. That's an e-mail from myself to Rick Singer.

19 Q. The date of the e-mail?

09:45 20 A. September 30, 2015.

21 Q. And the subject line?

22 A. "Vanessa".

23 MS. WRIGHT: The government offers Exhibit 695.

24 THE COURT: It will be admitted.

25 (Exhibit 695 admitted into evidence.)

1 Q. So here you say "Here are 2 profiles" -- you say to Rick,
2 "Here are 2 profiles for Vanessa. They are similar, but
3 figured Jovan can choose which one he prefers. If he needs
4 something different as well let me know".

5 So you had created two different versions of the
6 profile for Vanessa Feiwell?

7 A. That's correct.

8 MS. WRIGHT: Okay. Let's take a look at the
9 attachments, please, Miss Lewis. I have a paper copy with the
09:46 10 attachments not on it. I have a paper copy. I can use that
11 one.

12 Q. So this is that same e-mail we were just looking at?

13 A. Yes.

14 Q. Okay. And is this one of the profiles that you attached,
15 that you created for Vanessa Feiwell?

16 A. Yes, it is.

17 Q. And did you follow that same basic process you discussed
18 to create this?

19 A. I did, yeah.

09:47 20 Q. And these photos, they appear to be different than the one
21 that was in that original e-mail?

22 A. Can I see that? Can I see that again real fast?

23 Q. Can we go back to it? Yes.

24 A. Yes.

25 Q. Okay. So here, Huntington Beach High School, that was the

1 high school information that you came up with?

2 A. Yes.

3 Q. And then Huntington Beach Water Polo Club, that's a club
4 team that you found?

5 A. Yes. I actually believe in the previous e-mail that was a
6 club team that was listed on there, but I still had to look for
7 that club team and come up with all of the stuff associated
8 with it.

9 Q. Okay. And this is the second attachment to that same
09:48 10 e-mail. So this is just a slightly different version of that
11 same profile?

12 A. That's correct.

13 Q. And why did you create the two different versions?

14 A. So I created one with two photos in case that was what
15 they wanted to use, and it was really just the two different
16 photos was the big thing.

17 Q. And so based on your communications with Rick you believe
18 that you were creating these profiles for Jovan Vavic?

19 A. That's correct.

09:49 20 Q. At some point did you start creating profiles for Donna
21 Heinel instead of for coaches at USC?

22 A. Yes, I did.

23 Q. Can you tell us how that came about?

24 A. Yes. So I received an e-mail from Rick that said that he
25 had spoke with Donna Heinel directly and he was given the

1 go-ahead to give her athletes and ask me to -- or give her
2 students to present as athletes, and he asked me to create the
3 profiles for them.

4 MS. WRIGHT: Okay. Miss Lewis, if we can switch back
5 to the monitor and pull up Exhibit 329, for the witness only.

6 Q. Miss Janke, do you recognize this document?

7 A. Yes, I do.

8 Q. What is it?

9 A. It's an e-mail from myself to Rick Singer.

09:50 10 Q. What's the date?

11 A. July 16, 2017.

12 Q. So approximately two years after those e-mails about
13 Vanessa Feiwell we just looked at?

14 A. Correct.

15 Q. And had you continued making profiles for Rick Singer
16 during that two-year interim period?

17 A. Yes, I had.

18 Q. And what's the subject line of that e-mail?

19 A. "A couple opportunities to help if you like".

09:50 20 MS. WRIGHT: The government offers Exhibit 329.

21 THE COURT: It will be admitted.

22 (Exhibit 329 admitted into evidence.)

23 MS. WRIGHT: Okay. Miss Lewis, if we can go to the
24 bottom e-mail in the chain and blow that up. Thank you.

25 Q. So this is from Rick to you. "Laura I met with Donna this

1 week in her office and she gave the action items to create
2 profiles for all the kids I presented to her. Would you be
3 willing to put the profiles together for pay?"

4 What did you understand him to mean by the kids he
5 presented to her?

6 A. What I understood it to mean was he spoke with her about
7 these kids going in as, being presented as athletes, and that
8 he would give her all the information for these students.

9 Q. Was it typical for Mr. Singer to ask you to create this
09:51 10 many profiles at one time?

11 A. Previously before this, no. It had just been for a few
12 students here and there, so no.

13 Q. And did you end up -- we'll go through some of them, but
14 did you end up creating profiles for each of the students
15 listed here?

16 A. To my knowledge, I believe that I did for everyone, yes.

17 Q. And did you follow that same basic process you discussed
18 in order to create them?

19 A. I did.

09:52 20 Q. So were they all falsified?

21 A. They were, correct.

22 MS. WRIGHT: We can go to the next part of the e-mail
23 chain.

24 Q. You say, "Yes I would be willing to do that. When does
25 she need them by? Did she say if the format I normally use is

1 fine, or did she want other items in it?"

2 What did you mean by the formatting you normally use?

3 A. I just meant the format -- so on the profile we saw before
4 of Vanessa Feiwell, was that format okay or did she specify if
5 there was a different type of profile that she needed.

6 MS. WRIGHT: Okay. So if we can go to the top half of
7 the chain. Thank you.

8 Q. So Rick responds, "She would prefer by very early
9 August -- same format as the rest".

09:53 10 And then your response up here at the top, "Okay
11 sounds good. Please send me the pertinent information and I
12 will get started".

13 And you list some items here similar to how you had
14 for Vanessa Feiwell?

15 A. That's correct.

16 Q. And then down here, you say, "If they play the sport --
17 position, club, accolades if they have them, picture". What
18 did you mean by that?

19 A. So, again, if they did play the sport at some sort of
09:53 20 level, I just wanted to get some of that information, or
21 information that they had so I could include that in there, and
22 then I could add -- falsify and add to that list of
23 information.

24 Q. And here you say, "If they don't have the items pertaining
25 to the sport, let me know and I will create"?

1 A. Yes. So that meant if they hadn't played a sport or
2 didn't have enough accolades, then I was going to have to
3 Google and find information that could be used so that they
4 appear to be an athlete.

5 Q. Did you have any direct contact with Donna Heinel in
6 relation to these profiles for these students?

7 A. I did not.

8 Q. Did you have any discussions with Donna about whether or
9 not these were legitimate recruits?

09:54 10 A. I did not.

11 Q. Did you have an understanding of whether they were
12 legitimate recruits?

13 A. Well, based on the fact that I was the one creating these
14 profiles, I knew a couple things:

15 One, if they were truly an athlete at the caliber of
16 playing there, they would have their own profile already. And
17 also, if they were an athlete that could play at the college
18 level, they would have been going through the coach of that
19 sport at the university to be recruited. They would not have
09:54 20 been going in through Donna Heinel, because in all of my
21 experiences recruiting when we had an athlete that we wanted,
22 we, as the coach, presented it to her, not somebody else coming
23 and giving the information to her.

24 Q. Let's discuss some of the students that are listed in the
25 bottom e-mail in just a little bit more detail.

1 MS. WRIGHT: Miss Lewis, if you could pull up
2 Exhibit 335, for the witness only.

3 Q. Miss Janke, do you recognize this document?

4 A. Yes.

5 Q. What is it?

6 A. It's an e-mail from Rick Singer to myself.

7 Q. What's the date?

8 A. July 27, 2017.

9 MS. WRIGHT: Government offers Exhibit 335.

09:55 10 THE COURT: It will be admitted.

11 (Exhibit 335 admitted into evidence.)

12 Q. Here Rick has forwarded you an e-mail from Gamal Aziz and
13 writes, "For Sabrina Aziz - basketball player from China".

14 Do you recall whether Sabrina Abdelaziz was on that
15 list of students that we just looked at? We can pull it back
16 up if you like.

17 A. Yeah. If you can pull it back up. I believe she was, but
18 I just want to make certain.

19 MS. WRIGHT: Sure. If you can pull up Exhibit 329
09:56 20 again, Miss Lewis. The bottom. Perfect. Thank you.

21 Q. You see here where it says "Sabrina Abdelaziz -
22 basketball"?

23 A. Yes.

24 MS. WRIGHT: Okay. If we can go back to 335. Thank
25 you. There's an attachment to this e-mail. If we can go to

1 the attachment.

2 Q. This appears to be Sabrina Abdelaziz's high school
3 transcripts?

4 A. Yes.

5 Q. What did you -- by Rick sending you this transcript and
6 saying basketball player from China, what did you understand
7 that to mean?

8 A. That he needed me to come up with a profile for her and he
9 was basically telling me that she lives in China so I would
09:57 10 have to find accolades that seem realistic for somebody that's
11 playing in China.

12 MS. WRIGHT: Miss Lewis, if you can now pull up
13 Exhibit 346, again for the witness only.

14 Q. Miss Janke, do you recognize this document?

15 A. Yes, I do.

16 Q. What is it?

17 A. It's an e-mail from Rick Singer to myself.

18 Q. What's the date of the e-mail?

19 A. July 27, 2017.

09:57 20 Q. So the same date as that e-mail we just looked at?

21 A. Correct.

22 MS. WRIGHT: The government offers this exhibit,
23 Exhibit 346.

24 THE COURT: It's admitted.

25 (Exhibit 346 admitted into evidence.)

1 Q. Again, Rick Singer is forwarding you an e-mail from Gamal
2 Aziz?

3 A. Correct.

4 Q. And there's an attachment, but the subject line is "First
5 SAT score taking it again soon"?

6 A. Yes.

7 MS. WRIGHT: And if we just scroll down to the
8 attachment, please, Miss Lewis.

9 Q. This appears to be a copy of Sabrina Abdelaziz's SAT
09:58 10 score?

11 A. Yes.

12 Q. Again, what was your understanding of why Rick Singer was
13 sending this information to you?

14 A. Because, again, he wanted to -- me to come up with this
15 profile for her. And when I was making these profiles, I
16 needed the pertinent information, such as SAT score and
17 transcript, to put on there, but also -- I also used this
18 information because as -- student athletes being presented, at
19 least at USC, they have a lot more leeway than in terms of
09:58 20 grades than the normal population of students has. And so when
21 I was creating these, I have to look at the grades they have,
22 knowing that they possibly wouldn't get in if they were an
23 athlete based on their grades, but then I would also have to
24 come up with the accolades I was creating for basketball and I
25 had to make it believable enough so that you could look at them

1 and say that they would make an impact on the team, but without
2 raising any red flags as well to -- for them to say this person
3 is so good, why are they, you know, a walk-on or anything else.

4 MS. WRIGHT: Miss Lewis, if you could pull up
5 Exhibit 344, for the witness only.

6 Q. Miss Janke, do you recognize this document?

7 A. Yes, I do.

8 Q. What is it?

9 A. It's an e-mail from Rick Singer to myself.

09:59 10 Q. What's the date of the e-mail?

11 A. July 27, 2017.

12 Q. So the same date as those prior two e-mails we just looked
13 at?

14 A. Correct.

15 Q. And what's the subject line?

16 A. "Sabrina".

17 MS. WRIGHT: Government offers Exhibit 344.

18 THE COURT: It's admitted.

19 (Exhibit 344 admitted into evidence.)

10:00 20 Q. So, again, this is a forwarded e-mail that Rick sends you,
21 the original e-mail being from Gamal Aziz with this photo here.
22 What do you understand this photo to be?

23 A. I understood that to be the photo that I needed to use in
24 the profile that I was creating.

25 Q. Did you believe that to be a photo of Sabrina Abdelaziz

1 playing basketball?

2 A. I did.

3 Q. Why did you believe that?

4 A. Because it was forwarded from somebody and, also, any time
5 that Rick didn't have a photo, he wasn't -- I was Googling it
6 and trying to just find a photo of anybody online.

7 MS. WRIGHT: Miss Lewis, if we could now pull up
8 Exhibit 658, please, for the witness only.

9 Q. Do you recognize this document, Miss Janke?

10:01 10 A. Yes, I do.

11 Q. What is it?

12 A. It's an e-mail from myself to Rick Singer.

13 Q. What's the date of the e-mail?

14 A. August 7, 2017.

15 Q. And again, what's the subject line?

16 A. "Sabrina."

17 MS. WRIGHT: The government offers Exhibit 658.

18 THE COURT: It will be admitted.

19 (Exhibit 658 admitted into evidence.)

10:01 20 Q. So here you write "Profile for Sabrina.... her e-mail,
21 phone and parents names needed to be added in as I did not have
22 that. Let me know if you want me to add any other awards to
23 her profile, or if you think that is enough".

24 MS. WRIGHT: And then if we can go to the attachment,
25 please. Thank you.

1 Q. Is this the profile that you created for Sabrina
2 Abdelaziz?

3 A. Yes, it is.

4 Q. Okay. Let's go through a few of the items on here. This
5 picture, I know it's a little bit hard to see this copy, but is
6 this the same picture that Rick had forwarded to you?

7 A. Yes, it is. I just cropped it down to zoom in more on
8 certain players and the ball.

9 Q. Okay. And you see where it says "Point Guard" under
10:02 10 Sabrina Abdelaziz's name?

11 A. Yes.

12 Q. Did you know whether Sabrina Abdelaziz played point guard?

13 A. I did not.

14 Q. So how did you come up with that?

15 A. Based on the picture, the individuals in the picture
16 didn't look very tall, height-wise, and I knew that to be the
17 other positions you had to be, you know, 6 feet or taller. So
18 I knew that, as a point guard, you could be a little bit
19 smaller, and so I felt that that would be the most believable.

10:02 20 Q. And then the height, 5'8". Did you know whether Sabrina
21 Abdelaziz's height was 5'8"?

22 A. I did not.

23 MS. WRIGHT: If we could scroll down to the bottom
24 point of the profile. Thank you.

25 Q. Here under "Hong Kong International School Basketball",

1 where did this information come from?

2 A. So that was the name of her school based off of the
3 transcript and then I basically Googled that school. This one
4 was a little bit harder because I didn't know anything about
5 the way China ran their athletic programs and so I basically
6 had to Google about the school and then other schools in the
7 area so that I could try to find activities or conferences that
8 would align with where she was going to school.

9 Q. And then under "Hong Kong Basketball Academy", did you
10:03 10 know what Hong Kong Basketball Academy was?

11 A. No. Again, that was just me Googling to try to find
12 something that would be believable enough to admissions and to
13 also make it look like she was a strong enough player to make
14 an impact on the team so she could be admitted. In regards to
15 that as well, I know there's a couple things on there that I
16 would typically use for soccer profiles that I put in there
17 because I just -- I wasn't sure about athletics there.

18 Q. You see up above where it says "Season Average" and then
19 it has those stats there, statistics?

10:04 20 A. Yes.

21 Q. Where did you get those?

22 A. I just came up with those. I looked to see on different
23 profiles what might be like an average points per game or
24 assists per game for a player that could look like they could
25 play at the college level.

1 Q. Did you have any direct communication with Gamal Aziz in
2 relation to this profile?

3 A. I did not.

4 Q. Did you ever have any direct contact with the parents for
5 whom you were creating these profiles?

6 A. No.

7 Q. Okay. Just a few more documents to go through.

8 MS. WRIGHT: Miss Lewis, if we could pull up Exhibit
9 361, which I believe is in evidence. Sorry. If we can start
10:05 10 at the top so we can see the subject line.

11 Q. This is an e-mail from you to Rick Singer, dated
12 August 16, 2017, so close in time to when you had just sent
13 that profile for Sabrina Abdelaziz?

14 A. Yes.

15 Q. And the subject line is "For me to complete USC athletic
16 profile"?

17 A. Yes.

18 Q. Okay.

19 MS. WRIGHT: Now, let's scroll down to the bottom,
10:05 20 please, Miss Lewis. Thank you.

21 Q. So you're not on these original e-mails, but it appears to
22 be a chain between Rick Singer and Devin Sloane that he then
23 forwards to you?

24 A. Yes.

25 Q. And you see here Rick says "did you do Matteo Sloane --

1 Italian water polo player that attends Buckley"?

2 A. Yes.

3 Q. Do you recall -- and again, we can pull it up side by side
4 if you like -- was Matteo Sloane one of the kids on that
5 original list that Rick had sent to you?

6 A. I believe it was, but I would have to see the e-mail to be
7 sure.

8 Q. Okay.

9 MS. WRIGHT: Miss Lewis, if you could pull up 329.

10:06 10 Q. You see here where it says "Matteo Sloane - Water Polo"?

11 A. Yes.

12 MS. WRIGHT: We can go back to 361, please.

13 Q. You respond, "No. I didn't have anything on him. I will
14 get it done".

15 And then Rick responds back to you, "Donna sent back
16 she needs a different picture for Olivia and Sabrina and I need
17 to get an action photo for Gino from mom".

18 Who is Olivia?

19 A. Olivia is Olivia Giannulli, who I had created a profile
10:06 20 for for rowing at USC.

21 Q. And then do you recall who Gino is?

22 A. Yes. Gino Palatella. And in the e-mail Rick had asked me
23 to create a profile for him for football.

24 MS. WRIGHT: If we can scroll up, Miss Lewis.

25 Q. And then you reply, "What kind of pictures does she want

1 from them?"

2 And then Rick replies, "For Sabrina clearer and
3 Olivia different look than the one we used".

4 What did you understand Rick to mean with respect to
5 Olivia by saying "different looks than the one we used"?

6 A. So what I understood that to mean is when I was creating
7 Olivia's profile, I had Googled and found multiple pictures of
8 females that were rowing and I had sent him multiple pictures,
9 and we were trying to decide which one to use because we --
10:08 10 when looking for that picture, we didn't want it to be a
11 picture that was just dead on of their face because I didn't
12 necessarily know what she looked like, and also, we didn't want
13 to tip anybody off if -- to know that that wasn't actually her.
14 So yeah, I sent him multiple pictures. And so I believe that
15 from this e-mail what he was saying was the one that we ended
16 up using wasn't going to work and now could we pick from a
17 different photo from all the ones that I had sent him.

18 Q. And had you previously created a profile for Olivia
19 Giannulli's older sister?

10:08 20 A. Yes, I had.

21 Q. Do you happen to recall which school or sport?

22 A. It was also for USC rowing.

23 Q. And at the top of the e-mail chain, you say, "Yikes... you
24 gave me the picture for Sabrina. Do you have a different one?"

25 What did you mean by that?

1 A. I just meant that he had initially forwarded me the e-mail
2 with the picture that was being used for Sabrina. So I was
3 asking him if he had a different one to put on the profile.

4 MS. WRIGHT: Miss Lewis, if we can now pull up
5 Exhibit 367, for the witness only.

6 Q. Do you recognize this document, Miss Janke?

7 A. Yes.

8 Q. What is it?

9 A. It's an e-mail from Rick Singer to myself.

10:09 10 Q. What's the date of the e-mail?

11 A. August 16, 2017.

12 Q. The same day as that previous e-mail chain we just looked
13 at?

14 A. Uh-hum.

15 Q. And what's the subject line?

16 A. "Tommy".

17 MS. WRIGHT: The government offers Exhibit 367.

18 THE COURT: It will be admitted.

19 (Exhibit 367 admitted into evidence.)

10:09 20 Q. So down here, the first e-mail from you to Rick is "Here
21 is a profile for Tommy. Let me know what you think of the
22 picture, et cetera.

23 "Also, any thoughts on the pictures for Olivia and
24 Sabrina?"

25 Who is Tommy? Do you recall?

1 A. Tommy is Tommy Kimmel, who I had also done a profile for
2 for him.

3 Q. You say, "Let me know what you think of the picture, et
4 cetera". Do you happen to recall what picture you were
5 referring to?

6 A. Yeah. So for him I also had to Google and just find a
7 picture online of a track athlete.

8 MS. WRIGHT: Miss Lewis, if we can pull up Exhibit 384
9 quickly, which is already in evidence. If you'll go to the
10:10 10 second page, please. Thank you.

11 Q. Is that the photo that you had put on the profile you
12 created for Tommy Kimmel?

13 A. Yes, it is.

14 MS. WRIGHT: Thank you. If we can go back to 367,
15 please.

16 Q. Rick responds, "Can we take one of the others for Olivia
17 that you provided? Sabrina -- I will get another".

18 MR. KELLY: I'll object, 401, 403 and all these
19 questions about other kids.

10:11 20 THE COURT: Objection's overruled.

21 Q. Do you recall ever receiving another photo or replacement
22 photo for Sabrina Abdelaziz?

23 A. I do not.

24 MS. WRIGHT: Miss Lewis, if you can pull up
25 Exhibit 383, which is in evidence, and go to the second page,

1 please.

2 Q. If we can pull up the one that we already looked at that
3 you created for Sabrina Abdelaziz, but how does this compare to
4 what you had done?

5 A. I know that the height is different than what I had put,
6 because I put 5'8", and in addition, that is not the picture
7 that I had put on the profile.

8 MS. WRIGHT: Miss Lewis, if we can now pull up, for
9 the witness only, Exhibit 659.

10:12 10 Q. Do you recognize this document, Miss Janke?

11 A. Yes.

12 Q. What is it?

13 A. It's an e-mail from myself to Rick Singer.

14 Q. And the date?

15 A. August 21, 2017.

16 Q. And the subject line?

17 A. "Profiles".

18 MS. WRIGHT: The government offers Exhibit 659.

19 THE COURT: It will be admitted.

10:12 20 (Exhibit 659 admitted into evidence.)

21 Q. This is an e-mail from you to Rick. "Sorry, I just found
22 these in my outbox from over the weekend. Olivia and Matteo".

23 And those are the students we had discussed from that
24 prior e-mail chain?

25 A. That's correct.

1 MS. WRIGHT: If we could go then to the attachments,
2 please, Miss Lewis.

3 Q. Is this the profile that you had created for Matteo
4 Sloane?

5 A. Yes.

6 Q. And we won't go through it all, but did you follow that
7 same basic process we've discussed in creating this?

8 A. I did, yes.

9 Q. And here on the right-hand side where it says "Italian
10:13 10 Youth National Team", why and how did you come up with that?

11 A. So in the previous e-mail, Rick had said Matteo Sloane,
12 Italian Youth National Team. So I used that. I don't know if
13 he actually did play for them or did not. I didn't have the
14 information. And so, once again, I looked up the Italian Youth
15 National Team and tried to come up with accolades that
16 pertained to the actual Italian national team and tried to use
17 those to make it look like he's a believable athlete.

18 MS. WRIGHT: And if we could go to the next page,
19 please, next one.

10:13 20 Q. And is this the profile you created for Olivia Giannulli?

21 A. Yes.

22 Q. And where did that photo come from?

23 A. That's again a photo that I found online of a rowing
24 person.

25 MS. WRIGHT: If we could now pull up Exhibit 414,

1 which is in evidence. Go to the second page, please.

2 Q. Here at the top, do you see it says "Matteo Sloane"?

3 A. Yes.

4 Q. Is that the photo that you had put on the profile you
5 created for Matteo Sloane?

6 A. No.

7 Q. But there's Italian Youth National Team. Is that the
8 information that you had put for Matteo Sloane purportedly
9 playing in Italy?

10:14 10 A. Yes.

11 Q. Did you continue creating false athletic profiles for
12 Mr. Singer after this point?

13 A. Yes, I did.

14 Q. Do you recall creating a profile for a girl named Audrey
15 Isackson?

16 A. Yes. I believe it was for rowing.

17 Q. What about Agustina Huneeus?

18 A. Yes. I believe she was for USC water polo.

19 Q. And others as well?

10:15 20 A. Yes.

21 Q. When you were doing all this, did you believe that you
22 were committing a crime?

23 A. I know that lying is wrong and I was raised by my family
24 to be better. I was raised to have morals and values and
25 raised to know that lying is wrong and is not appropriate and

1 I completely put all that aside and continued to lie throughout
2 this process, and that is wrong.

3 Q. And who did you feel that you were lying to?

4 A. I was lying to the universities. I was lying to
5 admissions. And even furthermore, I know what it takes to be a
6 Division 1 athlete. It takes a lot of commitment, a lot of
7 dedication, and it's something that you don't take lightly,
8 because it's very hard to do and in doing this --

9 MR. KELLY: Objection. No question is pending, your
10:16 10 Honor.

11 THE COURT: Overruled.

12 Q. You may continue.

13 A. In doing this and creating these profiles and lying about
14 that, I basically devalued and underscored the commitment that
15 it takes for an athlete to play and to be given the
16 opportunity.

17 Q. When were you arrested for your participation in this?

18 A. I was arrested in March of 2019.

19 Q. You testified earlier that you pled guilty to racketeering
10:16 20 and conspiracy in about May of 2019?

21 A. Yes.

22 Q. In connection with your guilty plea, did you enter into
23 any agreements with the government?

24 A. Yes.

25 MS. WRIGHT: Miss Lewis, if you could first pull up

1 Exhibit 676, for the witness only.

2 Q. Do you recognize this document?

3 A. Yes.

4 Q. What is it?

5 A. It's my plea deal between myself and the government.

6 MS. WRIGHT: And the government offers Exhibit 676.

7 THE COURT: It will be admitted.

8 (Exhibit 676 admitted into evidence.)

9 MS. WRIGHT: If you can go to page 7, please,

10:17 10 Miss Lewis.

11 Q. Do you see where it says under "Acknowledgment of Plea
12 Agreement"? Is that your signature, Miss Janke?

13 A. That's my signature, yes.

14 Q. What's your general understanding of what sentence the
15 government has agreed to recommend under the terms of this Plea
16 Agreement?

17 A. They recommend 27 months.

18 MS. WRIGHT: Miss Lewis, if you can please now pull up
19 Exhibit 677, for the witness only.

10:18 20 Q. Do you recognize this document, Miss Janke?

21 A. Yes.

22 Q. What is it?

23 A. It's a Cooperation Agreement between myself and the
24 government.

25 MS. WRIGHT: The government offers Exhibit 677.

1 THE COURT: It will be admitted.

2 (Exhibit 677 admitted into evidence.)

3 MS. WRIGHT: If we can go to page 5, please,
4 Miss Lewis.

5 Q. And again, under "Acknowledgment of Cooperation
6 Agreement", is that your signature there?

7 A. Yes.

8 Q. Can you tell the jury what your understanding is of what
9 you've agreed to do under the terms of the Cooperation
10 Agreement?

11 A. That I have agreed to tell the truth. I have agreed to
12 tell exactly what I did and be truthful and, in exchange, they
13 could recommend a different sentencing.

14 Q. Are you hoping for a lower sentence as a result of your
15 cooperation?

16 A. I mean, yeah. I don't want to go to jail and not be home
17 with my kids.

18 Q. Who ultimately decides your sentence?

19 A. The judge.

10:19 20 MS. WRIGHT: No further questions.

21 THE COURT: Cross-examination, Mr. Kelly.

22 MR. KELLY: Yes, your Honor.

23 CROSS-EXAMINATION OF LAURA JANKE

24 BY MR. KELLY:

25 Q. Good morning, Miss Janke. I represent Gamal Abdelaziz.

1 A. Good morning.

2 Q. Now, everything the prosecutor just asked you about, none
3 of it you discussed with Gamal Abdelaziz, right?

4 A. Correct.

5 Q. And all of the fake stuff that you put into Sabrina
6 Abdelaziz's athletic profile, none of it you discussed with
7 Gamal Abdelaziz, right?

8 A. Correct.

9 Q. And you got that information from Rick Singer, right?

10:20 10 A. Correct.

11 Q. That's the man you and the prosecutor keep calling Rick,
12 right?

13 A. Correct.

14 Q. And Rick is the reason you're here today, right?

15 A. The reason I'm here is because I allowed myself to
16 continue to lie and to do this, and I need to take
17 responsibility for that.

18 Q. Okay. Well, you didn't voluntarily drive down to the
19 federal U.S. Attorney's office and say, I'd like to confess to
10:20 20 lying and taking bribes, what can I do to help, did you?

21 A. No, but I also didn't stand up for myself and stop it when
22 I knew it was wrong.

23 Q. Right. But you also got a call from Rick Singer when he
24 pretended there was some audit of his foundation, right?

25 A. Yes.

1 Q. And that's what triggered this chain of events that lands
2 you here today, right?

3 A. That's what ultimately did, but again, it was me not being
4 truthful.

5 Q. Well, you said you knew that lying was wrong. You also
6 know that taking bribes is wrong, too, right?

7 A. Yes.

8 Q. Okay. And Singer called you on December 3rd of 2018. Do
9 you recall that?

10:21 10 A. I recall him calling me, yes.

11 Q. And do you recall that he twice just referred to a person
12 as Donna?

13 A. I don't remember those specific details.

14 MR. KELLY: All right. Let me just show the witness
15 then, please, 609A.

16 Q. And direct your attention to page 2, lines 19 through 23.
17 And then I'm going to direct your attention to something else
18 in this document. Okay. And then go to page 3, lines 23 to
19 24. Do you see a reference to a person named Donna?

10:22 20 A. Yes.

21 Q. And having seen that --

22 MR. KELLY: Please take it down.

23 Q. Having seen that, does that refresh your recollection that
24 when Singer called you he twice referred to a person as Donna?

25 A. Yes.

1 Q. And you knew exactly who he was referring to, right?

2 A. Correct.

3 Q. He didn't have to tell you multiple times that she's the
4 Senior Women's Administrator of USC? He didn't have to explain
5 who she was to you, right?

6 A. Right.

7 Q. You knew exactly who it was, right?

8 A. Uh-hum.

9 Q. And who was it?

10:23 10 A. That was Donna Heinel, the Senior Women's Administrator at
11 USC.

12 Q. Right. And you knew that because you had worked at USC as
13 an assistant soccer coach and you were very familiar with both
14 Donna Heinel and the internal workings of the USC SUBCO
15 process, right?

16 A. I knew the SUBCO process from my experience with them, but
17 I've never been in a SUBCO meeting to know the internal part of
18 it.

19 Q. Okay. Fair enough. But you at least knew there was a
10:23 20 SUBCO process, you weren't part of it, but it existed at USC
21 and that's how the athletes got into USC, right?

22 A. Yes.

23 Q. Okay. And you, at least, were a coach at USC. You
24 weren't some outsider like a parent, right?

25 A. Yes.

1 Q. And you never discussed the internal USC SUBCO process
2 with Gamal Abdelaziz, did you?

3 A. No.

4 Q. And again, you never spoke with Gamal Abdelaziz at all
5 about any of this, right?

6 A. No.

7 Q. And you got all your information about the Abdelaziz
8 family from Rick Singer, correct?

9 A. Correct.

10:24 10 Q. And, of course, when Singer was calling you in December of
11 '18, he was hiding the fact that he was working for the
12 government, right?

13 A. Yeah. He didn't tell me that anything had happened. I
14 don't know that -- the term working for the government.

15 Q. Well, he at least hid the fact that he was taping your
16 call, right?

17 A. Yes.

18 Q. Okay. And based upon your experience, he was an
19 especially good liar, wasn't he?

10:25 20 A. I mean, from the instances of our interactions of him
21 having me create these profiles, then, knowing that they were
22 not truthful.

23 Q. So he hid things, a lot of things from you, correct? A
24 lot of his business, what he was actually doing?

25 A. Yes. He hid some.

1 Q. And all these forwarded messages, the prosecutor showed
2 you from Singer that had earlier e-mails from Gamal Abdelaziz,
3 Singer never connected you directly with Gamal, did he?

4 A. No.

5 Q. And you were the one making up the fake athletic profiles,
6 right?

7 A. I created the fake athletic profiles. Yes.

8 Q. With zero communication to Gamal Adelaziz, right?

9 A. Correct.

10:25 10 Q. And let me show you, please, I think it's in evidence,
11 344. Yes. That's it. Now, Singer forwarded you that, right?

12 A. Yes.

13 Q. Okay. Now, when he forwarded you that, did he ever tell
14 you that there were four other photos that day from
15 Mr. Abdelaziz?

16 A. No.

17 Q. He hid that from you?

18 A. Yeah. He didn't -- I wasn't aware.

19 Q. Okay. Did the government ever show you the four other
10:26 20 photos from that day?

21 A. No.

22 Q. So that was hidden from you --

23 MS. WRIGHT: Objection.

24 THE COURT: Sustained.

25 Q. Let's look at Exhibit 338 in evidence. Let's go to the

1 second page. You ever seen that picture before in that e-mail?

2 A. No.

3 Q. Let's go to 339, please, Exhibit 339 in evidence.

4 MS. WRIGHT: Objection. She's not on any of these
5 e-mails.

6 MR. KELLY: It's in evidence.

7 THE COURT: Well, she can look at the pictures and see
8 if it refreshes her memory.

9 Q. Have you seen this one before?

10:27 10 A. No.

11 Q. Let me show you 341, in evidence. Have you ever seen this
12 one before?

13 A. No.

14 Q. How about Exhibit 342? Let's go back to the top of this,
15 please. Have you ever seen this one before?

16 A. No.

17 Q. And it's also dated July 27, 2017, right?

18 A. Uh-hum.

19 Q. I should have pointed out the dates of the others as well,
10:28 20 but would you -- did you happen to see that the others I just
21 showed you were also dated July 27th?

22 A. No. I didn't look at the dates of those pictures.

23 Q. Yeah. Sorry. Let me do that real quickly. 341. See the
24 date?

25 A. Uh-hum.

1 Q. July 27th.

2 Okay. Let's see 339. The date.

3 Let's see 338. The date.

4 Let's go back to the one you were shown, 344. Let's
5 look at the date. The date from Aziz.

6 So you were unaware that there were four other
7 pictures, correct?

8 A. Correct.

9 Q. Singer hid that from you, right?

10:29 10 A. Yeah. I did not -- I never saw them.

11 Q. And in preparation for your testimony today, you never saw
12 them either, right?

13 A. No.

14 Q. How many hours of preparation do you think you did
15 approximately with the government before you testified here?

16 A. Several.

17 Q. More than five, less than ten or?

18 A. Probably more than ten.

19 Q. More than ten. Okay. In those more than ten hours, you
10:29 20 never saw those photos, right?

21 A. No.

22 Q. Now, are you aware that Singer hid things about you from
23 Abdelaziz?

24 A. No.

25 Q. Let me show you Exhibit 329, which is now in evidence.

1 Okay. You were shown this earlier today. Let's just look at
2 that line. Well, first of all, let's look at the date,
3 July 16th. Then let's look at the line where it says, "If they
4 don't have the items pertaining to the sport, let me know and I
5 will create". You see that?

6 A. Yes.

7 Q. And above it there's a bunch of stuff you're trying to get
8 information, right?

9 A. Uh-hum.

10:30 10 Q. Now, let's put that side by side with what's in evidence
11 at Exhibit 330. Let's look at the date on 330. Let's go down,
12 further down, please, to where Singer, on July 16th, same day,
13 same day, look at all the stuff he's asking for. It's the same
14 stuff you want, right?

15 A. Uh-hum.

16 Q. And below, the message from Singer to Aziz, there's
17 nothing from you, is there, in Exhibit 330?

18 A. No.

19 Q. It's being cut out where you say "If they don't have the
10:31 20 items +pertaining to the sport, let me know and I will create".
21 That's been deleted, correct?

22 A. Correct.

23 Q. So Singer is not telling Abdelaziz there's a young woman
24 named Laura Janke who's creating information about the profile,
25 is he?

1 A. No. He hasn't here.

2 Q. All right. Let's go to -- before we go to that, your
3 expertise is really soccer, right?

4 A. Yes.

5 Q. You played in college. You coached. So you know a lot
6 about soccer, right?

7 A. Uh-hum.

8 Q. How about basketball?

9 A. I played basketball when I was younger and I never played
10:32 10 at a high level. I've been around it from coaching and
11 speaking with coaches of basketball.

12 Q. Right. So you've actually coached some basketball over
13 the years?

14 A. No. I was saying I've spoke with coaches that have.

15 Q. Right. Are you familiar with all the numbers that certain
16 players do -- like in the old days, you got two guys, two
17 forwards, and a center. Right?

18 A. Uh-hum.

19 Q. Now they use numbers. Are you familiar with the number
10:32 20 system?

21 A. I know they use numbers, but I'm not familiar with them.

22 Q. Right. Not everyone's familiar with the numbering system
23 of a player, right, including yourself who has some experience
24 in this area?

25 A. Uh-huh.

1 Q. Is that a yes?

2 A. Yes.

3 Q. Let's go to 658, please, that's in evidence. Let's go to
4 the picture on the back of that, please, second page.

5 MR. KELLY: Thank you, Mr. Carter.

6 Q. And do you see the picture of a girl with glasses
7 dribbling the ball, right?

8 A. Yes.

9 Q. Let's put that next to --

10:34 10 MR. KELLY: I'm sorry, Mr. Carter, I want to put that
11 next to Exhibit 381 in evidence. Let's see it -- well, let's
12 first look at the front page of 381.

13 Q. This is from Donna Heinel on 10/3/17, right before SUBCO
14 meets about Sabrina.

15 A. Okay.

16 Q. Okay? And now let's look at the second page of that one.
17 Different girl, right?

18 A. Uh-hum.

19 Q. So all these questions about the girl with the basketball
10:34 20 and the glasses is not even the one that was presented to SUBCO
21 on behalf of Sabrina Abdelaziz's application, correct?

22 A. Correct.

23 Q. Did you have anything to do with finding this young woman
24 just jogging there, number five?

25 A. No, I did not.

1 Q. All right. Now let's go to --

2 MR. KELLY: Let's keep these two up, please, and let's
3 go to I think it's 658, the one on the right. The front page,
4 please.

5 Q. Okay. Here, you are asking Singer about the profile.
6 First sentence you're saying you need her --

7 MR. KELLY: I'm sorry. Just yellow that whole line.

8 A. "Her e-mail, phone" ... "as I did not have that". You're
9 telling Singer you don't have Sabrina's e-mail, phone, right?

10:35 10 Her e-mail, phone, and parents' names, correct?

11 A. Yes. I would always ask Singer to give that to me. I
12 hadn't had it yet to put into the profile.

13 Q. Okay. So you wanted to put Sabrina's e-mail and Sabrina's
14 phone into the package, right?

15 A. Uh-hum.

16 Q. I'm sorry. You have to say yes or no just for the record.

17 A. Yes. Sorry.

18 Q. And are you aware that Singer never got her e-mail and
19 phone from Gamal Abdelaziz?

10:36 20 A. No.

21 Q. Well let's look at the Exhibit 381 that's in evidence to
22 the left. Let's look at the phone and the e-mail line in the
23 top left. It's her dad's phone and dad's e-mail that Singer
24 had at the time, right?

25 A. Yes.

1 MR. KELLY: We can take that down, please.

2 Q. You've -- in addition to being prepared for today, you
3 estimate that's over ten hours. Is that separate from any
4 discussions or meetings with the FBI?

5 A. What do you mean discussions with the FBI?

6 Q. I'm sorry. In terms of just general amount of time you
7 spent with the government, whether it's the FBI or prosecution
8 team, is that what you were referring to when you said more
9 than 10 hours, or were there additional meetings with the FBI
10:37 10 that you weren't counting?

11 A. No. I was referring to all of it.

12 Q. The whole thing?

13 A. Uh-hum.

14 Q. Okay. Now, didn't you tell the FBI that the USC soccer
15 team did not have a particular number of spots, it could vary
16 slightly year to year, right?

17 A. Yes. It can vary within reason of a soccer team.

18 Q. Sure. You can't have a hundred kids on a soccer team, but
19 you can have 13 or 20, 21 or 22, right? It varies year to
10:38 20 year?

21 A. Correct.

22 Q. And didn't you also tell the FBI that, at USC, donations
23 were looked upon favorably, but did not create a guarantee?
24 Did you say that?

25 A. I said donations were looked upon fairly, but in a --

1 Q. Favorably?

2 A. But in an honest way.

3 Q. Favorably?

4 A. I don't recall using that word specifically, but what I
5 would have meant by it is in an honest way they would have
6 wanted donations.

7 MR. KELLY: Let me -- just for the witness only,
8 please.

9 Q. Show you Exhibit 9032 and go to the second page, please,
10:39 10 and go to on the --

11 MR. KELLY: Keep going, please where it says "USC
12 Development".

13 Q. Can you look at the first sentence of that, please, and
14 just read it to yourself.

15 MR. KELLY: Okay. Please take it down.

16 Q. And does that refresh your memory as to whether or not you
17 told the FBI that, at USC, it was looked upon favorably if a
18 student could donate to USC, but this was not a guarantee?

19 A. I recall that, but that's not the full context that I
10:39 20 meant it to be.

21 Q. All right. So, like everything, there's always more
22 context, right?

23 A. Uh-hum.

24 Q. I'm sorry, but you have to say yes or no.

25 A. Yes. Sorry, sorry.

1 Q. But that is something you told the FBI, right?

2 A. Yes.

3 Q. Of course, you knew that USC is a private university,
4 right?

5 A. Yes, they are.

6 Q. They, in fact, at one point had a \$6 billion campaign to
7 raise money?

8 A. Yes, they did.

9 Q. And a lot of wealthy kids do, in fact, go to USC?

10:40 10 A. Yes. There's -- there's kids of every economic background
11 there.

12 Q. Including a lot of wealthy kids at USC, right?

13 A. Yes.

14 Q. And were you aware while you were there that the USC
15 Athletic Department had a whole group devoted to fundraising
16 called the Trojan Athletic Fund?

17 A. Yes. I've heard of it, but again, it's through proper
18 channels of donations.

19 Q. Well, did you work for the Trojan Athletic Fund while you
10:40 20 were there?

21 A. No.

22 Q. Okay. Did you know that a man named Ron Orr led the
23 Trojan Athletic Fund?

24 A. I know who he is, yes.

25 Q. Okay. And how much interaction did you have with him?

1 A. Not a lot, just hi or hello.

2 Q. Do you know whether or not he used this SUBCO process as a
3 means to raise money for USC?

4 A. I'm not aware of that. From what I was always told, SUBCO
5 was -- you use it to admit athletes that are going to play for
6 your team.

7 Q. Well, I mean, this whole SUBCO process is what Rick
8 Singer, with your assistance, exploited, right?

9 MS. WRIGHT: Objection to the argument.

10:41 10 THE COURT: Sustained.

11 Q. Well, didn't you help Rick Singer exploit the process at
12 USC so kids could get in that otherwise might not get in,
13 right?

14 A. I did, and I'm not proud of it and --

15 Q. But -- but Rick Singer did that with you, right?

16 A. Yes.

17 Q. He was the one asking you and providing you all the
18 information, right?

19 A. Yes. He was the one e-mailing me and forwarding me
10:42 20 e-mails.

21 Q. Okay. And based upon your discussions with him, he knew
22 there was a SUBCO process at USC, right?

23 A. Yes.

24 MS. WRIGHT: Objection to what he knew.

25 THE COURT: Yeah. Sustained.

1 Q. Well, at some point during your many years in discussions
2 with him, did it appear to you that he knew there was a SUBCO
3 process at USC?

4 A. He knew how the process worked for athletes to get in, in
5 my discussions with him or speaking to him about it.

6 Q. Okay. And in fact, didn't you tell the FBI that all of
7 Singer's kids went in through the walk-on process, right?

8 A. Could I look at the document?

9 Q. Sure.

10:43 10 MR. KELLY: Let's go to Exhibit 9031, please, page 4,
11 just for the witness. The middle paragraph where it begins
12 with "for kids being recruited".

13 Q. And then look at the last sentence of that paragraph and
14 just read it to yourself, please.

15 MR. KELLY: Okay. Now please take it down.

16 Q. Having read that, does it refresh your memory that, in
17 fact, you told the FBI that all of Singer's student athletes
18 were put forth as walk-ons?

19 A. All the ones that we used with soccer were put through as
10:43 20 walk-ons.

21 Q. So Singer exploited that walk-on process, right?

22 A. He used that.

23 Q. Right, because I think you told the FBI also that
24 recruited walk-ons, if they quit, they don't lose a
25 scholarship. They don't have a scholarship, right?

1 A. No. Recruited walk-ons don't have a scholarship. But on
2 my team, we still expected them to come and participate and be
3 an active member of the team participating.

4 Q. But it was not unusual for recruited walk-ons to leave the
5 roster after a year, right?

6 A. When recruited walk-ons, if they did leave, it was a very
7 hard decision for them because it was a sport that they loved.
8 They loved being a part of the team and they loved being around
9 it. So while sometimes you would have one quit in a year, you
10:44 10 may not, and it was not a process that they took lightly to
11 just up and quit or leave the team.

12 Q. Okay. Didn't you tell the FBI it was not unusual for
13 recruited walk-ons to leave the roster after one year?

14 A. Once again --

15 Q. I'll show you Exhibit 9032.

16 MR. KELLY: Just the witness, please.

17 Q. Top of page 2, the sentence that starts with "some".

18 MR. KELLY: Yellow that, please. All right. Please
19 take it down.

10:45 20 Q. Having read that, does it refresh your recollection that
21 you told the FBI that some recruited walk-ons decided this may
22 not have been them and quit, so it's not unusual for recruited
23 walk-ons to leave the roster after a year?

24 A. It does refresh my recollection. And again, I was
25 referring to the athletes that we recruited in regards to

1 playing for us or making the decision not to play anymore.

2 Q. Okay, but Singer did this because, as you told the FBI,
3 this made it easier to put Rick Singer's students as recruited
4 walk-ons because no one would ask questions at USC as to why
5 they were leaving the roster after one year, right?

6 A. Uh-hum.

7 Q. I'm sorry. Again, you have say yes or no.

8 A. Yes, yes.

9 Q. It doesn't raise any red flags to do it this way with
10:46 10 these recruited walk-ons. If you're going to make up phony
11 accolades and get kids who aren't the USC level, that's the way
12 to do it, right, to use the recruitment process?

13 A. That's the way we did it, but from admissions or anybody
14 else's standpoint, it would not have been okay.

15 Q. Well, did you ever work at the Admissions Office?

16 A. No, but we were told to be truthful and employees of
17 character.

18 Q. And did you know what Donna Heinel may have told about --
19 may have been told about her fundraising responsibilities for
10:46 20 USC?

21 A. I do not know what she was told.

22 Q. You don't know what Pat Haden -- do you know who Pat Haden
23 is, right?

24 A. I know who Pat Haden is.

25 Q. He was the athletic director of USC, right?

1 A. Yes.

2 Q. Do you know what Pat Haden may have told Donna Heinel she
3 should be doing to raise money at USC?

4 A. I do not, but again, I can just speak for my experiences
5 there. They always talked to us about making sure we're
6 employees of character and being good role models for our
7 student athletes.

8 Q. Well, you do know what Coach Ali told you, right?

9 A. Yes.

10:47 10 Q. He said there's two ways to keep your job at USC? I think
11 you said win -- win or bring in money, right? Isn't that what
12 you just testified to with the prosecutor?

13 A. Bring in money in an okay fashion, not by lying to the
14 university or anybody else.

15 Q. Well, that's certainly what Ali was doing, right?

16 A. Yes.

17 Q. And there was pressure on him to bring in money. Either
18 win or bring in money, right?

19 A. But our first and foremost job was to recruit and win and
10:47 20 be coaches.

21 Q. Now you said you didn't recruit team managers, but you
22 did, in fact, have team managers, correct?

23 A. We did have one team manager to my recollection and we
24 later had a student athlete who was no longer able to play
25 because of injury, and she stayed on to help the team and be in

1 that role.

2 Q. Okay. And you were asked by the prosecutor about practice
3 players. And the question was, what does it mean to you. Do
4 you remember that question?

5 A. Uh-hum. Sorry.

6 Q. Yes, you remember that question?

7 A. Yes.

8 Q. Okay. So you were asked, what does it mean to you,
9 correct?

10:48 10 A. Correct.

11 Q. Now, you, obviously, have been an assistant soccer coach
12 at USC and have a lot more knowledge about the system than most
13 people, don't you?

14 A. Correct.

15 Q. You have no idea what a practice player meant to Gamal
16 Adbelaziz, do you?

17 A. Sorry. Can you --

18 Q. You have no idea what the term "practice player" means to
19 Gamal Abdelaziz, do you?

10:49 20 A. No.

21 Q. And you have no idea what Rick Singer told Gamal Abdelaziz
22 about practice players at USC, do you?

23 A. I don't.

24 Q. And you have no idea what Rick Singer told Gamal Abdelaziz
25 about team managers at USC, do you?

1 A. I don't.

2 Q. I'm not sure if I asked you this. If I already asked you,
3 I apologize. Pat Haden, you knew who he was, right?

4 A. Yes.

5 Q. Did you know that Pat Haden met with Rick Singer at one
6 point?

7 A. Rick had told me that he was meeting with Pat Haden, but I
8 don't know what was discussed or anything like that.

9 Q. Are you aware that it was the athletic director Pat Haden
10:50 10 who introduced Donna Heinel to Rick Singer?

11 A. Yes.

12 Q. And you have no idea, again, what Haden told Heinel about
13 her responsibilities to raise money for USC, correct?

14 A. I do not, but, again, in my seven years working there,
15 there was never -- there was never so much pressure that we
16 needed to lie and do things dishonestly in order to bring in
17 money.

18 Q. But you did anyway, right?

19 A. I did, yes.

10:50 20 Q. And are you aware that other coaches took walk-ons in
21 exchange for contributions?

22 A. No. The only thing that I was ever told was that when Ali
23 told me that water polo was doing the same thing.

24 Q. Are you aware that USC itself kept data on practice
25 players who were children of significant donors?

1 A. No.

2 Q. I'd like to show you Exhibit 1219, please.

3 MR. KELLY: I'd like to go to the second page. I'd
4 like to go to the box on the far right under "Notes". I'd like
5 to go to the second and third entry. First one says
6 "significant" -- yes. That one there, yeah. And the one above
7 it. Right there.

8 MS. WRIGHT: Can we take the document down now? She
9 already said she's unaware.

10:51 10 MR. KELLY: Objection. I haven't asked the question.

11 THE COURT: He hasn't asked the question.

12 Q. Now, have you had time to read that?

13 A. I've read the parts in yellow.

14 MR. KELLY: Okay. And please take it it down.

15 Q. Does that refresh your recollection as to whether or not
16 USC kept data about children of donors and how they could be
17 practice players?

18 A. I've never seen that document before, but what I can tell
19 you is I didn't know that they -- I've never seen that, so I
10:52 20 didn't know they kept data.

21 And second, in my experiences, anybody that was on
22 our team, walk-on or practice player, because we didn't call
23 them practice players, but that was somebody who could be on
24 the team and make an impact and actually contribute.

25 MR. KELLY: Now, your Honor, this has been agreed upon

1 as preauthenticated through stipulation. I offer this
2 document, 1219.

3 MS. WRIGHT: Objection. Can we see it? Just because
4 it's authentic, doesn't mean it's admissible.

5 MR. KELLY: It's their document. It's 1219.

6 MS. WRIGHT: Okay. She just said she's never seen it
7 before and wasn't aware.

8 THE COURT: Are you objecting?

9 MS. WRIGHT: Objection.

10:53 10 THE COURT: The objection's sustained.

11 MR. KELLY: One moment, your Honor.

12 Q. Now with respect to the profile on Sabrina Abdelaziz, you
13 simply made up her statistics, like scoring 12 points a game,
14 right?

15 A. Yes.

16 Q. Okay. And these athletic profiles, again, were created by
17 you based upon information provided by Rick Singer, right?

18 A. He provided some of the information and the rest of it was
19 me Googling and finding information.

10:54 20 Q. Okay. And you had zero discussions with Mr. Abdelaziz
21 about this, correct?

22 A. Correct.

23 Q. You never met the man?

24 A. Correct.

25 Q. You never talked to the man?

1 A. Correct.

2 Q. You never met his daughter Sabrina?

3 A. No.

4 Q. Never talked to Sabrina?

5 A. No.

6 Q. Here, as the government brought out on direct, you've pled
7 guilty to a racketeering conspiracy?

8 A. Correct.

9 Q. Are you aware that's not charged in this case? There's no
10:54 10 racketeering RICO charges in this case?

11 A. No.

12 Q. And it's the government who is suggesting they could
13 recommend 27 months in prison for you, the mother of, at the
14 time, a 3-year-old? That was your understanding?

15 MS. WRIGHT: Objection.

16 THE COURT: Sustained.

17 Q. Well, you testified on direct that your child is 5 years
18 old, correct?

19 A. Yes.

10:55 20 Q. And two years ago when you pled guilty, obviously that
21 means your child was three, correct?

22 A. Yes.

23 THE COURT: Objection.

24 THE COURT: Sustained.

25 Q. Well, when you pled guilty, the government said it would

1 recommend 27 months in prison unless you cooperated, right?

2 MS. WRIGHT: Objection to the characterization.

3 THE COURT: Sustained.

4 Q. Well, okay. Let's look at Exhibit 676, page 2. Line --
5 under "Sentence Recommendation", let's see how it's
6 characterized under A. "Incarceration at the low end of the
7 Guidelines". That's how the government characterized it,
8 right?

9 A. Uh-hum.

10:56 10 Q. I'm sorry. You have to say yes or no.

11 A. Yes.

12 Q. And then let's go to Exhibit 9035, not in evidence, just
13 for the witness. You've seen the face page. Now let's go to
14 page 9, bottom sentence.

15 MR. KELLY: Let's yellow that whole sentence. There
16 you go. And does -- take it down, please.

17 Q. And does that refresh your recollection that the
18 government said the guidelines were 27 to 33 months?

19 A. Correct.

10:56 20 Q. And, under the Plea Agreement, they had said they'd
21 recommend the low end of the Guidelines, correct?

22 A. Correct.

23 Q. And that's how they characterized it, right?

24 A. Correct.

25 Q. And the low end is -- obviously 27 to 33, the low end is

1 27 months, right?

2 A. Correct.

3 Q. So unless they -- you cooperate with them, that's what
4 they were going to recommend for somebody like you, right?

5 MS. WRIGHT: Objection. Someone like you.

6 THE COURT: Sustained.

7 Q. Well, is that what they were going to recommend for you?

8 A. On my document, that's what it says would be recommended.

9 Q. Right. And then there's a Cooperation Agreement where
10:57 10 it's up to the U.S. Attorney's office to decide whether to file
11 this substantial assistance motion, right?

12 A. Are you referring to the --

13 Q. Let me ask you what's your understanding. It depends
14 upon -- the ultimate sentence, of course, depends on whatever
15 the judge who was assigned to your case wants to do, right?

16 A. Yes.

17 Q. Different case, different judge, right?

18 A. Yes.

19 Q. All right. And, by testifying obviously you're hoping to
10:58 20 get some credit for assisting the government in this case,
21 right?

22 A. I'm here testifying, because, first, I want to take
23 responsibility for what I did. It was wrong. Second, I know,
24 like I said, what I did was wrong and I'm here to tell the
25 truth and tell what I know happened.

1 Q. Okay, but obviously, you don't want to go to jail, right?

2 A. No. Nobody wants to go to jail.

3 Q. Right. And the determination of who files a substantial
4 assistance motion to your judge is entirely up to the
5 prosecutors, right?

6 A. From how I know is it's ultimately up to the judge what
7 happens to me.

8 Q. Okay. Let me show you Exhibit 677 in evidence, please.

9 MR. KELLY: Go to page 2, Substantial Assistance
10:59 10 Motion, second paragraph, the first two lines.

11 Q. You see where it says, "The determination whether
12 Defendant", that would be you, "has provided substantial
13 assistance rests solely in the discretion of the U.S. Attorney
14 and is not subject to appeal or review"? You see that?

15 A. Yes.

16 Q. And then it says, "The U.S. Attorney will make this
17 determination based on the truthfulness and value of
18 Defendants' assistance, regardless of the outcome or result of
19 any proceeding or trial". You see that?

10:59 20 A. Yes.

21 Q. So it's up to the U.S. Attorney to determine the value of
22 your assistance to them, right?

23 A. Yes. They recommend.

24 Q. It says, "The U.S. Attorney will make this determination",
25 and then they talk about truthfulness and value of your

1 assistance, right?

2 A. Yes.

3 Q. They make the call. They don't all collectively vote.
4 They make the call before they file a Substantial Assistance
5 Motion, right?

6 A. Well, again, they make the call, but it's up to the judge.
7 I mean, I --

8 Q. Well, if you can just read the first sentence, it says
9 "The determination whether Defendant has provided substantial
11:00 10 assistance rests solely in the discretion of the U.S. Attorney
11 and is not subject to appeal or review". If they don't want to
12 file a motion, they don't have to, right?

13 A. Right.

14 Q. Okay, but ultimately, of course, it's up to the judge to
15 determine what's appropriate in your case, right?

16 A. Yes.

17 MR. KELLY: Okay. Nothing further, your Honor.

18 THE COURT: Before we go to the cross from
19 Miss Papenhausen, we will take a morning recess of 15 minutes.
11:01 20 We will be in recess for 15 minutes.

21 THE CLERK: All rise for the jury.

22 (Jury exits.)

23 THE COURT: Be seated, counsel.

24 You may step down, Miss Janke.

25 Miss Papenhausen, approximately how long on cross?

1 MS. PAPENHAUSEN: No more than five to ten minutes,
2 your Honor.

3 THE COURT: Five to ten minutes. All right. And then
4 will the next witness be the order that we had on Friday,
5 Mr. Frank?

6 MR. FRANK: The next witness is Mr. Nahmens, your
7 Honor.

8 THE COURT: Mr. Nahmens. So we're skipping Masera for
9 the time being?

11:02 10 MR. FRANK: Correct, your Honor.

11 THE COURT: And then the order is as originally.

12 MR. FRANK: And Mr. DeMaio after that.

13 THE COURT: Anything that needs to come to the Court's
14 attention before we recess?

15 MR. FRANK: No, your Honor.

16 MR. KELLY: No, your Honor.

17 THE COURT: We're in recess for 15 minutes.

18 (Recess taken 11:02 a.m. to 11:22 a.m.)

19 THE CLERK: All rise for the jury.

11:22 20 (Jury enters.)

21 THE CLERK: Thank you. You may be seated.

22 THE COURT: Good morning again, jurors. We're ready
23 to resume.

24 Ms. Janke, you're reminded you remain under oath.

25 And, Ms. Papenhausen, you may conduct

1 cross-examination.

2 MS. PAPENHAUSEN: Thank you.

3 CROSS-EXAMINATION OF LAURA JANKE

4 BY MS. PAPENHAUSEN:

5 Q. Good morning, Ms. Janke. My name is Lauren Papenhausen.

6 I represent John Wilson.

7 A. Good morning.

8 Q. You testified on direct that Mr. Khosroshahin told you
9 that Jovan Vavic had been working with Rick Singer, correct?

11:23 10 A. Correct.

11 Q. Now, Mr. Khosroshahin told you that Jovan Vavic was in
12 fact one of at least five USC coaches who were working with
13 Rick Singer, correct?

14 A. Sorry, can you repeat that again?

15 Q. Mr. Khosroshahin told that you Jovan Vavic was one of at
16 least five USC coaches who were working with Rick Singer,
17 correct?

18 A. I don't -- I don't recall that it was five other coaches.

19 Q. You recall the tennis coach?

11:24 20 A. Yes, he did tell me the tennis coach, yes.

21 Q. The golf coach.

22 A. Yes, I know he had spoke with the golf coach, but I don't
23 know for sure if he was working with Rick Singer.

24 Q. Maybe some other coaches?

25 A. I honestly don't recall who else he told me. It was

1 mainly Jovan that Ali would always speak about.

2 Q. When you heard that all of these coaches were working with
3 Rick Singer, the money was going to the program, correct?

4 A. In terms of soccer, that's how it initially started, but
5 in terms of the other programs, I don't know.

6 Q. So in terms of soccer, when the money was going to the
7 program, you mentioned that some of the money from a parent
8 went to fund a summer trip that the soccer team took, correct?

9 A. That's correct.

11:25 10 Q. Where was that summer trip to?

11 A. The soccer team took a trip to Europe to compete.

12 Q. What was the purpose of going to Europe to compete?

13 A. So, at least for soccer, once every four years, at least
14 when I was coaching, you were allowed to take your team on a --
15 on a -- to play in other countries just to give the team more
16 experience, to allow them to come together as a team and just
17 compete internationally.

18 Q. How expensive was that trip?

19 A. It was very expensive. I don't know off the top of my
11:25 20 head, but it was a large expense.

21 Q. When you were at USC and working with Rick Singer to help
22 get his students admitted onto the soccer team, were any of
23 those students all-league players?

24 A. I don't know for sure if any of them were. I would
25 falsify documents or the profiles and say that students were

1 all league or this or that, but I don't -- I don't know if any
2 were, in fact, or not.

3 Q. Were any of those students playing in a top school
4 program?

5 A. Again, there could have been some that were playing, but I
6 don't know to the extent, and as far as I knew it was not
7 enough to be able to play at that level or else they would have
8 been being recruited by the coach of the university.

9 Q. Were any of those students playing in a top club program?

11:27 10 A. Again, there could have been some that were playing in the
11 club programs. But, again, the information that I added to
12 their profile was to fill in any gaps or to falsify, to make
13 them seem that they were a strong enough athlete to, again,
14 play at that level.

15 Q. Were any of those players supported by a top high school
16 coach?

17 A. I don't know.

18 Q. You didn't even talk to the high school coaches for any of
19 these players, correct?

11:27 20 A. Correct.

21 Q. As opposed to, as you were talking about what a normal
22 recruiting process would involve of course talking to the high
23 school coach, correct?

24 A. Yes. So the normal process I would have talked to the
25 high school coach or a club coach; and in a typical process if

1 an athlete is good enough to play at that school, they're being
2 admitted and recruited by a specific coach.

3 Q. You also mentioned on direct that if somebody was an
4 athlete at the college level, that it would be going through
5 the coach, correct?

6 A. Correct.

7 Q. So if Johnny Wilson was going through the coach, that
8 would suggest that he could be an athlete at the college level,
9 correct?

11:28 10 MS. WRIGHT: Objection, hypothetical.

11 THE COURT: Well, she can -- I'll allow her to answer
12 that hypothetical.

13 A. Can you repeat the question?

14 Q. Sure.

15 If Johnny Wilson were, in fact, going through the
16 coach, that would suggest that he could be an athlete at the
17 college level, correct?

18 A. Well, it depends if they were recruited or not. We had
19 people going through Ali and I but they weren't recruited to be
11:28 20 on our team, they were just coming in through Rick. So it
21 would just depend on, I guess, what you're referring to.

22 Q. Sure. But if they were going through the process where
23 the coach was talking to the high school coach, that would be a
24 normal recruitment process, correct?

25 A. Yes.

1 Q. And that would suggest that they're an athlete who can
2 compete at the college level, correct?

3 A. Correct.

4 Q. In your early dealings with Rick Singer, you initially
5 believed that he was truthful, correct?

6 A. Yes, I believed, yes, that he was truthful.

7 Q. You trusted him.

8 A. I trusted him because I trusted Ali with my life and Ali
9 trusted Rick and so I trusted him as well.

11:29 10 Q. Ms. Janke, you never made a profile for Johnny Wilson,
11 correct?

12 A. No.

13 MS. PAPENHAUSEN: Thank you, I have nothing further.

14 THE COURT: Any redirect?

15 MS. WRIGHT: Very briefly.

16 THE COURT: Yes, Ms. Wright.

17 REDIRECT EXAMINATION

18 BY MS. WRIGHT:

19 Q. Just a couple of questions for you, Ms. Janke.

11:30 20 A. Okay.

21 Q. Mr. Kelly asked you some questions about whether Rick
22 Singer hid things from you. Do you remember those questions?

23 A. Yes.

24 Q. Did Rick Singer ever hide from you the way that he was
25 getting these kids into school?

1 A. No, not at all. I was part of that process for him to get
2 these students into school.

3 Q. And he didn't hide the fake profiles aspect of that from
4 you, correct?

5 A. No, because I was, especially at the end, the one creating
6 those profiles and supplying, giving them to him.

7 Q. And Rick Singer didn't hide from you the fact that the
8 parents of these students were paying money to get their kids
9 in as recruited athletes, did he?

11:31 10 MR. KELLY: Objection to leading the witness.

11 THE COURT: Sustained.

12 BY MS. WRIGHT:

13 Q. Was it clear to you that the parents of these students
14 were paying money to get these kids into school as recruited
15 athletes?

16 MR. KELLY: Objection.

17 THE COURT: She can have that question.

18 A. Yes, because he always made it clear that if these
19 students did get in through athletics, myself and Ali would be
11:31 20 compensated; and also I knew that once it was -- when I had
21 helped facilitate it through Donna, I knew that she was being
22 compensated as well from the money.

23 Q. Mr. Kelly also showed you a bunch of photos that Gamal
24 Abdelaziz had sent to Rick Singer of girls playing basketball.
25 Do you remember those e-mails?

1 A. The -- yes, I remember.

2 MS. WRIGHT: Ms. Lewis, if we could please pull up
3 Exhibit 344, which is in evidence.

4 Q. And this is the photo that Rick Singer did forward to you
5 from Gamal Abdelaziz, right?

6 A. That's correct.

7 Q. And this is the only photo that was attached to that
8 e-mail?

9 A. That's correct.

11:32 10 Q. And what's the subject line of this e-mail?

11 A. "Sabrina."

12 Q. Mr. Kelly also asked you some questions suggesting that
13 it's not unusual for a walk-on to leave the team and be taken
14 off the roster after one year. Do you remember that set of
15 questions?

16 A. I do.

17 Q. Would it be unusual in your experience coaching soccer at
18 USC for a walk-on to not show up ever?

19 A. The only scenario that we had that was with Rick's
11:32 20 students where they didn't show up; I never met them, I had
21 never spoke with them. Any other player that -- even if they
22 had quit after a year was a player that we had recruited, we
23 had gone through the process with, we saw them play, we knew
24 them, and I believe, as I said before, it was -- if they did
25 choose to quit, it was not a decision that was taken lightly.

1 There was a lot of conversations with them, a lot of them going
2 back and forth in trying to decide if that's what they wanted
3 to do because they had given their life to the sport.

4 Q. You were also asked some questions about fund-raising at
5 USC, particularly in the athletics department. Do you remember
6 that?

7 A. Yes.

8 Q. Did anyone -- while you were coaching at USC, did anyone
9 come out and explicitly tell you that you couldn't lie to get
11:33 10 recruited athletes in in exchange for money?

11 A. We were never told that we could do this, and outside of
12 Ali, I didn't speak about it with anyone else anywhere within
13 the department, because I knew at the end of the day that it
14 wasn't -- it wasn't something that would be appropriate or okay
15 to do.

16 Q. Was there any written policy saying you couldn't do it?

17 A. Well, we were always told as coaches and in our job
18 descriptions that we needed to be good role models, set good
19 examples, and our job was to recruit student athletes that
11:34 20 could make an impact on the team and help us win, help
21 contribute to the team, and student athletes that could also do
22 well in the classroom.

23 Q. And you've testified a little bit about how initially at
24 USC when you were doing this for Rick Singer, the money went to
25 the soccer program initially and then it went to the camp that

1 you and Ali Khosroshahin ran, correct?

2 A. That's correct.

3 Q. And whether -- in either instance, whether the money was
4 going to the soccer program or to your camp, did you believe
5 that it was wrong?

6 A. Yes, I believe that it was wrong. At the end of the day,
7 like I said, it was not a truthful way to be getting people
8 into school. And I can tell you that if somebody that we maybe
9 knew slightly or didn't know at all had come up to us and said,
11:35 10 Hey, I have a student that I want to get into school, they will
11 never play on your team, they won't do anything and can you
12 just do it out of the goodness of your heart, we wouldn't have
13 presented them.

14 Q. Say that a student was playing for a top club or top coach
15 and as a coach you had spoken to the high school coach or the
16 club coach, even in that instance would it be okay for you to
17 accept money in exchange for the recruitment?

18 MS. PAPENHAUSEN: Objection.

19 THE COURT: Grounds?

11:35 20 MS. PAPENHAUSEN: It's a hypothetical, calls for
21 speculation.

22 THE COURT: Well, she answered a hypothetical for you,
23 I'll let her answer a hypothetical for the government.

24 A. Sorry, can you repeat that?

25 Q. Sure. In your experience coaching at USC, say that you

1 were recruiting a top player and you had spoken to a well-known
2 coach for that player and gotten a great recommendation, in
3 that case would it be okay to accept money in exchange for the
4 recruitment?

5 A. No, not at all. We were recruiting athletes because they
6 were athletes. We had people on our team from all backgrounds
7 and we gave scholarships or offered spots based on what they
8 could contribute to the team on the field.

9 Q. Mr. Kelly asked you some questions about it being the
11:36 10 government that decides whether to recommend a lower sentence.
11 Do you remember those questions?

12 A. Yes.

13 Q. In your meetings with the government, what did agents and
14 prosecutors tell you was the number one thing to focus on and
15 the number one thing that was the most important?

16 MR. KELLY: Objection, vouching.

17 THE COURT: Sustained.

18 BY MS. WRIGHT:

19 Q. Do you have any vested interest in the outcome of this
11:36 20 trial?

21 A. No, I'm -- I'm here solely to tell the truth, to take
22 responsibility.

23 Every day I feel ashamed and embarrassed for what I've
24 done, for the disappointment that I've caused family and
25 friends, and I have two daughters that they need their mom to

1 be a role model and I need to show them you take responsibility
2 even when you really messed up, which is what I've done.

3 So, for me, however it turns out, it turns out. I'm
4 here because I need to tell the truth. That's all I have left
5 right now.

6 MS. WRIGHT: No further questions.

7 THE COURT: Mr. Kelly, recross.

8 MR. KELLY: Briefly, your Honor.

9 RECROSS-EXAMINATION OF LAURA JANKE

11:37 10 BY MR. KELLY:

11 Q. Just a few questions, Ms. Janke.

12 The prosecutor asked you about whether something was
13 clear to you about the parents.

14 It is clear to you that you never spoke to
15 Mr. Abdelaziz, right?

16 A. Yes.

17 Q. And you can tell the jury what your intent was, right?

18 A. Yes.

19 Q. You have no idea what his intent was, right?

11:38 20 A. I don't.

21 Q. And you have no idea what Rick Singer may have told this
22 man, Gamal Abdelaziz, do you?

23 A. No.

24 Q. All right. In fact, are you aware with respect to all
25 these questions about Donna Heinel, there's no evidence she was

1 personally pocketing any money until the summer of 2018? Are
2 you aware of that?

3 A. No.

4 Q. And are you aware of what she may or may not have
5 discussed with Pat Haden, the athletic director at USC?

6 A. I don't know what would have happened in both of their
7 discussions.

8 Q. You are aware, of course, that USC had an athletic
9 compliance department, right?

11:39 10 A. Yes.

11 Q. You're familiar with a man named Scott Simon?

12 A. I know the name, yes.

13 Q. And he was in the athletic compliance department, right?

14 MS. WRIGHT: Objection, this is beyond the scope.

15 THE COURT: How is this within the scope?

16 MR. KELLY: Well, your Honor, I will get to it very
17 quickly. I'm going to reoffer Exhibit 2019 (sic.). I'd like
18 to hear the government's objection so I can respond to it.

19 It's preauthenticated -- I checked my notes, we have
11:39 20 preauthenticated Exhibit 1219 and they have not articulated,
21 all they said is she's not on it. It's authenticated, so I'm
22 asking --

23 MS. WRIGHT: It's hearsay as to this witness.

24 MR. KELLY: Your Honor, it's a business record of USC.
25 This witness can be asked about non-hearsay business record;

1 that's what I'm trying to do here.

2 MS. WRIGHT: As to her, she wasn't on it --

3 THE COURT: The objection on 1219 is sustained.

4 MR. KELLY: Fine, your Honor.

5 Q. I guess the last question, with respect to that photo that
6 you did see, 344 with the girl dribbling the basketball, you
7 were totally unaware that there were other photos that had been
8 sent to Mr. Singer, right?

9 A. Correct.

11:40 10 Q. And you were totally unaware that 30 more had been sent to
11 Singer by Aziz in the middle of August, right?

12 A. Correct.

13 MR. KELLY: Nothing further, your Honor.

14 THE COURT: Ms. Papenhausen, any recross?

15 MS. PAPENHAUSEN: No, your Honor.

16 THE COURT: Thank you, Ms. Janke, you may step down.
17 Ms. Kearney.

18 MS. KEARNEY: The government calls James Nahmes.

19 THE CLERK: Would you please take the stand, sir, and
11:42 20 raise your right hand.

21 (James Nahmes, sworn.)

22 THE CLERK: Thank you. You may be seated.

23 And would you please state your name for the record,
24 spelling your last.

25 THE WITNESS: James Nahmes, N-a-h-m-e-s.

1 THE COURT: Mr. Nahmes, you may remove your mask if
2 you choose to.

3 THE WITNESS: Thank you, your Honor.

4 MS. KEARNEY: May I proceed?

5 THE COURT: Ms. Kearney, you may direct exam.

6 DIRECT EXAMINATION OF JAMES NAHMES

7 BY MS. KEARNEY:

8 Q. Good morning, Mr. Nahmes.

9 A. Good morning.

11:42 10 Q. Where do you live?

11 A. In Santa Rosa, California.

12 Q. Are you currently employed?

13 A. Yes.

14 Q. Where?

15 A. I am self-employed.

16 Q. What do you do?

17 A. I'm a Certified Public Accountant.

18 Q. Is that also known as a CPA?

19 A. Yes.

11:42 20 Q. How long have you been a CPA?

21 A. Forty years this year.

22 Q. Can you tell us your educational background?

23 A. I have a Bachelor of Science in commerce degree from Santa
24 Clara University.

25 Q. And how long have you been in business for yourself as a

1 CPA?

2 A. Since about 1990.

3 Q. Briefly, what did do you before that?

4 A. I worked in public accounting for various firms for four
5 years, and then I worked in private industry for a
6 manufacturing firm leading an accounting department before I
7 went on my own.

8 Q. What kind of accounting work do you do now?

9 A. Primarily tax return preparation and bookkeeping.

11:43 10 Q. Approximately how many tax returns have you prepared in
11 the course of your nearly 40-year career?

12 A. I don't have an accurate number, but I would guess about
13 2,000.

14 Q. And what kinds of tax returns have you prepared?

15 A. Individual returns and a variety of business returns,
16 including corporations, partnerships, limited liability
17 companies.

18 Q. I want to ask you some questions now about Hyannisport
19 Capital, but first let me ask you, are you familiar with John
11:44 20 Wilson?

21 A. Yes.

22 Q. Who is he?

23 A. He was the president of Hyannisport Capital.

24 Q. And how did you come to know John Wilson?

25 A. I was introduced to the firm by a colleague of mine.

1 Q. When you say "the firm," are you referring to Hyannisport
2 Capital?

3 A. Yes.

4 Q. And did you begin working for Hyannisport Capital?

5 A. I did.

6 Q. Approximately when did you work for Hyannisport Capital?

7 A. That was March of 2011.

8 Q. What work did do you?

9 A. Bookkeeping and preparation of the tax return for the
11:44 10 corporation.

11 Q. For how many years did you prepare Hyannisport Capital's
12 tax return?

13 A. I worked for Hyannisport Capital until March 2019.

14 Q. What kind of return did Hyannisport Capital file?

15 A. It's an S corporation income tax return.

16 Q. What is an S corporation?

17 A. An S corporation is a -- what's known as a pass-through
18 entity. The S corporation pays no federal tax itself, unlike a
19 regular corporation that would pay tax on its own income.
11:45 20 Instead, the income and deductions are passed through to the
21 shareholders and they pay tax on the income on their individual
22 return.

23 Q. How many shareholders did Hyannisport Capital have during
24 the time you were preparing its tax returns?

25 A. One.

1 Q. Who was that shareholder?

2 A. Mr. Wilson.

3 Q. On whose return was Hyannisport Capital income reported?

4 A. Mr. Wilson's.

5 Q. Did you ever prepare Mr. Wilson's personal taxes?

6 A. I did not.

7 Q. Why not?

8 A. I wasn't hired to do that.

9 Q. When it came time to prepare Hyannisport Capital's
11:46 10 returns, did you have a typical process that you followed?

11 A. Yes, I did.

12 Q. What was that process?

13 A. I would either phone or e-mail the administrative
14 assistant for Hyannisport Capital and either discuss with her
15 or put in an e-mail a list of standard documentation that I
16 needed.

17 I would also ask for a copy of the QuickBooks file,
18 the electronic accounting system, and I would prepare an
19 engagement letter to send to the client.

11:46 20 Q. Who was the administrative assistant that you contacted?

21 A. Debbie Rogers.

22 Q. What was the standard documentation you requested?

23 A. It was typically -- the most common documentation I
24 requested was backup for asset and liability accounts.

25 Q. And you mentioned QuickBooks. What is that?

1 A. QuickBooks is an electronic accounting system widely used
2 in the United States. In my situation, most of the clients
3 enter bank transactions and credit card transactions and then I
4 kind of take it from there.

5 MS. KEARNEY: Ms. Lewis, can we pull up for the
6 witness only Exhibit 646, please.

7 Q. Mr. Nahmes, do you recognize this document?

8 A. I do.

9 Q. What is it?

11:47 10 A. Is it an engagement letter.

11 Q. To whom was it sent?

12 A. To Hyannisport Capital.

13 Q. And what's the date?

14 A. The date is August 31, 2015.

15 MS. KEARNEY: The government offers Exhibit 646.

16 MR. KENDALL: No objection.

17 THE COURT: It will be admitted.

18 (Exhibit 646 received into evidence.)

19 BY MS. KEARNEY:

11:48 20 Q. And, Mr. Nahmes, if we can turn to the second page of this
21 engagement letter, section 2, the second service listed that
22 you provide concerns preparation for federal and California
23 corporation income tax returns for Hyannisport Capital. For
24 what tax period was this engagement letter applicable to?

25 A. For tax year 2014.

1 Q. And in that first paragraph under section 2, you wrote, "I
2 will not audit or verify the data you submit for preparation of
3 your returns and I will perform my tax services under the
4 assumption that all the information you submit to me is true,
5 complete and accurate according to the documents and other
6 information retained in your files."

7 What did you mean by that?

8 A. I meant that I was not going to verify any documentation I
9 received from the client.

11:49 10 Q. The last sentence of this paragraph reads: "My work in
11 connection with the preparation of your income tax returns does
12 not include any procedures designed to discover fraud,
13 defalcations, or other irregularities, should any exist."

14 What did you mean by that?

15 A. I meant that the work that I was going to do was not
16 designed to discover fraud and other things listed in the
17 letter.

18 MS. KEARNEY: And let's go to the bottom of the
19 letter, please, Ms. Lewis.

11:49 20 Q. And there's a signature there under the words "accepted
21 by."

22 Whose signature is that?

23 A. John Wilson.

24 Q. I'd like to turn next to what's been marked as Exhibit 134
25 for the witness only, please.

1 And, Mr. Nahmes, this is a lengthy document, there's
2 also a hard copy in the binder in front of you.

3 A. Okay.

4 Q. Do you recognize this document?

5 A. I do.

6 Q. What is it?

7 A. It's a copy of the work papers I used to prepare the 2014
8 tax return.

9 Q. For which company?

11:50 10 A. For Hyannisport Capital.

11 Q. Who prepared these work papers?

12 A. I did.

13 MS. KEARNEY: The government offers Exhibit 134.

14 THE COURT: They will be admitted -- it will be
15 admitted.

16 (Exhibit 134 received into evidence.)

17 MS. KEARNEY: If we can turn to page 3, Ms. Lewis.

18 BY MS. KEARNEY:

19 Q. And this is rather small print, but, Mr. Nahmes, generally
11:50 20 what information is contained on this page?

21 A. This is a schedule that I use to reconcile the amounts
22 that are shown on the company's books to what is reported on
23 the tax return.

24 Q. And if we can look at the line item titled "Consulting."
25 Underneath is an entry for "general business." What does that

1 refer to?

2 A. That refers to expenditures for general business
3 consulting.

4 Q. What amount was attributed to general business consulting
5 for 2014?

6 A. \$120,000.

7 Q. Did you receive backup documentation for this expense?

8 A. I did.

9 Q. And if I can direct your attention to page 95 of this
11:51 10 document.

11 What is reflected on this page?

12 A. Give me just a moment.

13 Page -- what's the --

14 Q. It's up on your screen and it's a page --

15 A. Oh. This was an invoice for general business consulting.

16 Q. And who is the invoice from?

17 A. Rick Singer.

18 Q. Who is it to?

19 A. Hyannisport Capital.

11:52 20 Q. What's the amount?

21 A. \$20,000.

22 Q. Were you familiar with Rick Singer at the time you were
23 preparing this tax return?

24 A. No.

25 Q. The description in the invoice states "Special consulting

1 income concept, design, and implementation of professional
2 development program for Hyannisport Capital associates."

3 What did you understand this invoice was for?

4 A. General business consulting.

5 Q. And how many employees did Hyannisport Capital have at
6 this time to your knowledge?

7 A. One.

8 Q. And who was that?

9 A. Debbie Rogers.

11:53 10 Q. And if we go to the next page, what is reflected on this
11 page?

12 A. This is also an invoice for general business consulting.

13 Q. And who is it from?

14 A. The Key.

15 Q. Who is it to?

16 A. Hyannisport Capital.

17 Q. What's the amount?

18 A. \$100,000.

19 Q. Were you familiar with The Key at the time you prepared
11:53 20 this tax return?

21 A. I was not.

22 Q. And the description here states: "Business consulting -
23 August-June 2014."

24 Are you familiar with what consulting was provided?

25 A. I am not.

1 Q. How were these payments to Mr. Singer and The Key
2 classified for tax purposes?

3 A. As, again, business consulting services.

4 Q. And I believe you testified that because Hyannisport
5 Capital is an S corporation, its income and expenses are passed
6 through to the shareholder here, Mr. Wilson. How does having
7 an additional \$120,000 in business consulting expenses affect
8 the amount of taxes that Mr. Wilson ultimately owes?

9 A. It would reduce the amount of taxable income that was
11:54 10 reported on that return.

11 Q. And how does that affect Mr. Wilson's taxes?

12 A. That should reduce the amount of tax paid.

13 MS. KEARNEY: If we go back to page 3, please,
14 Ms. Lewis.

15 Q. There's a line item here for "Donations." What does that
16 refer to?

17 A. Those would have been the charitable contributions for the
18 company.

19 Q. What amount was listed for donations for 2014?

11:55 20 A. \$195,000.

21 Q. Are charitable donations tax deductible?

22 A. Yes, they are.

23 Q. What qualifies as a deductible charitable donation?

24 A. Generally the donations need to be made to what's called a
25 501(c)(3) organization to be deductible, and there are quite a

1 few other requirements in order to have the deduction be
2 qualified.

3 Q. What is a 501(c)(3)?

4 A. It is a nonprofit organization.

5 Q. Is there any documentation requirements for -- that the
6 IRS requires for donations to be deductible?

7 A. Yes.

8 Q. What are those?

9 A. The substantiation requirements are that for donations
11:55 10 over \$250 you need to have an acknowledgment from the
11 organization and that needs to show the date of the
12 contribution, the charitable organization's name, amount of the
13 contribution, and the acknowledgment needs to state whether any
14 goods or services were received in exchange for the
15 contribution.

16 Q. Did you receive any backup documentation for these
17 donations totaling \$195,000?

18 A. I did.

19 MS. KEARNEY: Can we turn to page 97, please,
11:56 20 Ms. Lewis.

21 Q. Mr. Nahmes, what is reflected on this page?

22 A. This is a printout from the QuickBooks accounting system
23 that shows the detail of the donations made during the tax
24 year.

25 Q. One of the entries is dated April 7, 2014 for a wire to

1 The Key Worldwide in the amount of \$100,000. Were you familiar
2 with The Key Worldwide Foundation at the time you prepared this
3 return?

4 A. I was not.

5 Q. What were Hyannisport Capital's total donations for 2014
6 according to this page?

7 A. \$195,000.

8 Q. I want to turn your attention to page 107 of this
9 document.

11:57 10 What is reflected on this page?

11 A. This is an acknowledgment from The Key Worldwide
12 Foundation for \$100,000 contribution.

13 Q. To whom was it sent?

14 A. Hyannisport Capital.

15 Q. What's the date?

16 A. April 7, 2014.

17 Q. The first paragraph of this letter reads, "Thank you for
18 your contribution of \$100,000 to The Key Worldwide Foundation.
19 Your generosity will allow us to move forward with our plans to
11:58 20 provide educational and self-enrichment programs to
21 disadvantaged youth."

22 And the next paragraph indicates that no goods or
23 services were exchanged.

24 What did you understand that to mean?

25 A. The last part or all of that?

1 Q. What did you understand the sentence about no goods or
2 services were exchanged to mean?

3 A. Exactly what it says, that no goods or services were
4 exchanged in -- for the contribution.

5 Q. And again, where Hyannisport Capital's income and expenses
6 are passed through to the shareholder, Mr. Wilson, how does
7 having a charitable contribution of \$100,000 affect the amount
8 of taxes Mr. Wilson ultimately owes?

9 A. Generally it would reduce the amount of taxes.

11:59 10 MS. KEARNEY: We can take that down, Ms. Lewis.

11 Q. Mr. Nahmes, are you familiar with what's called a 1099
12 miscellaneous form?

13 A. Yes.

14 Q. What is that?

15 A. It's an annual information return that's required to --
16 that's used by businesses to report payments to independent
17 contractors.

18 Q. Who is required to file a 1099 miscellaneous form?

19 A. Anyone who makes certain payments over \$600 in the course
11:59 20 of their business.

21 Q. And when in the calendar year are these forms typically
22 filed?

23 A. They are due to the recipients, the people who receive the
24 money, at the end of January. They're due to the government
25 later in the year.

1 Q. Do you recall a time when you were preparing Hyannisport
2 Capital's 2014 return that you realized that the company had
3 not filed 1099 miscellaneous forms for certain payees?

4 A. Yes.

5 Q. Which payees?

6 A. That was Rick Singer and The Key.

7 Q. What did you do when you realized this?

8 A. I drafted an e-mail and sent an e-mail to Debbie Rogers
9 explaining the situation, that I felt that 1099 miscellaneous
10 needed to be completed for those payments to be in compliance
11 with tax law and suggested that I prepare them and file them.

12 Q. And would you have completed 1099 miscellaneous forms for
13 Mr. Singer and The Key if you thought the payments to them were
14 charitable contributions?

15 A. No.

16 Q. Once Hyannisport Capital's tax return was prepared, what
17 did you do with it?

18 A. I sent it to Debbie Rogers requesting that the return be
19 reviewed and the e-file authorization signed and returned to
12:01 20 me.

21 MS. KEARNEY: And if we can look at, for the witness
22 only, Ms. Lewis, Exhibit 645.

23 Q. Mr. Nahmes, do you recognize this document?

24 A. I do.

25 Q. What is it?

1 A. It's IRS form 8879-S. It's the IRS e-file signature
2 authorization for form 1120S.

3 Q. And there's a date at the bottom. What is it dated?

4 A. September 4, 2015.

5 MS. KEARNEY: The government offers Exhibit 645.

6 THE COURT: It will be admitted.

7 (Exhibit 645 received into evidence.)

8 BY MS. KEARNEY:

9 Q. Mr. Nahmes, what is the purpose of a form 8879?

12:01 10 A. This form authorizes me to e-file a company's tax return
11 on behalf of the client with the IRS.

12 Q. And under Part II, declaration and signature authorization
13 of officer, it reads, "Under penalties of perjury, I declare
14 that I am an officer of the above corporation and that I have
15 examined a copy of the corporation's 2014 electronic income tax
16 return and accompanying schedules and statements and to the
17 best of my knowledge and belief, it is true, correct and
18 complete."

19 And below that is a line for officer's signature.

12:02 20 Whose signature appears there?

21 A. John Wilson.

22 MS. KEARNEY: And, Ms. Lewis, if we can pull up
23 Exhibit 157A, which is already in evidence.

24 Q. Mr. Nahmes, I'm showing you a certified copy of the 2014
25 Form 1120-S income tax return for an S corporation for

1 Hyannisport Capital which has already been admitted into
2 evidence, and I'll note for the record that the identifying
3 number of the company has been redacted throughout this
4 document.

5 Who prepared this return?

6 MS. KEARNEY: Ms. Lewis, if you can go to the second
7 page to show the witness, please.

8 A. I prepared the return.

9 Q. If we go to page 3, Mr. Nahmes, is that your information
10 under "paid preparer use only"?

11 A. Yes, it is.

12 Q. Who filed this return on behalf of Hyannisport Capital?

13 A. I did.

14 Q. How did you file it?

15 A. Electronically.

16 MS. KEARNEY: If we can go back to page 2, Ms. Lewis.

17 Q. At the top of the form 1120S is that identifying
18 information for Hyannisport Capital?

19 A. Yes, it is.

12:03 20 MS. KEARNEY: If we can go just below this section,
21 please, Ms. Lewis.

22 Q. Do you see there that below the identifying information
23 there is a line that says in bold, "caution, include only trade
24 or business income and expenses on lines 1a through 21."

25 What did you understand that to mean?

1 A. That you were only supposed to put trade or business
2 expenses on those lines.

3 Q. And what is your understanding of the types of expenses
4 that can be included on an S corporation's tax return?

5 A. Business expenses.

6 Q. Where are personal expenses reported on this kind of
7 return?

8 A. They are not.

9 Q. What effect does the fact that Mr. Wilson was the sole
12:04 10 shareholder of Hyannisport Capital have on whether Mr. Wilson
11 could report personal expenses on Hyannisport Capital's
12 corporate return?

13 A. It has no impact because personal expenses are not
14 deductible.

15 Q. If we look below, there's a section titled "Income" and
16 has lines 1 through 6. How much income did Hyannisport Capital
17 report for tax year 2014?

18 A. No trade or business income. I believe there was other
19 types of income reported.

12:05 20 Q. If we go down to lines 7 through 21, in a section titled
21 "Deductions" -- first, just generally what are deductions?

22 A. Those are expenses of the company that qualify as tax
23 deductions.

24 Q. And if we look at line 19 under "other deductions," and it
25 says "attach statement," and it lists an amount of \$271,886.

1 MS. KEARNEY: And I'd like, Ms. Lewis, to put this
2 page up on the left, and if we can pull up page 34 of this same
3 exhibit on the right.

4 Q. Mr. Nahmes, you see on the right Ms. Lewis has pulled up
5 an "other deductions" schedule. How do the items listed in the
6 "other deductions" schedule relate to the information listed
7 under "other deductions" on line 19 of the return?

8 A. The schedule on the right should agree with the total of
9 the other deductions reported on line 19 on the screen on the
10 left.

12:06

11 Q. And on the right there is an entry for consulting. Does
12 that number include the \$20,000 payment to Mr. Singer and the
13 \$100,000 payment to The Key that we saw earlier?

14 A. It does.

15 Q. Why?

16 A. Because it was classified on the books as such.

17 Q. Whose expenses did you understand those invoices to relate
18 to?

19 A. Hyannisport Capital.

12:07

20 Q. And looking back on the left, there is line 21, ordinary
21 business income or loss of negative \$383,987.

22 Does that include the \$271,886 amount in other
23 deductions?

24 A. Yes, it does.

25 Q. And does that also then include the \$120,000 in payments

1 to Mr. Singer and The Key?

2 A. Yes.

3 Q. How does having a business loss of \$383,987 affect the
4 taxes that the shareholder of Hyannisport Capital, Mr. Wilson,
5 will ultimately owe?

6 A. Generally it would reduce the amount of taxes owed.

7 MS. KEARNEY: Ms. Lewis, if we can take those down and
8 turn to page 37 of this same document.

9 Q. Mr. Nahmes, I'm showing you the Schedule K-1. What is a
12:08 10 Schedule K-1?

11 A. The Schedule K-1 is a schedule that's included within the
12 tax return. It's also -- a copy is given to the shareholder
13 showing their portion of the income and deductions that flow
14 through to their individual return.

15 Q. Who is this K-1 for?

16 A. John B. Wilson.

17 Q. And the K-1 indicates that Mr. Wilson was the 100 percent
18 shareholder. What does that mean in terms of what is reported
19 on Mr. Wilson's personal tax returns?

12:08 20 A. That all of the income and deductions from Hyannisport
21 Capital would be reported on Mr. Wilson's individual income tax
22 return.

23 MS. KEARNEY: And, Ms. Lewis, if we can keep the K-1
24 up on the right and going back to page 2, line 21, on the left,
25 please.

1 And if you can call out box 1 on the K-1, please.

2 Q. Mr. Nahmes, how does box 1 on the K-9, which lists an
3 amount of \$383,987, relate to the ordinary business loss listed
4 in line 21?

5 A. It's the same amount.

6 MS. KEARNEY: And, Ms. Lewis, if we can now call out
7 box 12A of the K-1.

8 Q. And if we can -- well, first let me ask this.

9 Mr. Nahmes, what is reflected in box 12A?

12:10 10 A. That's the total charitable contributions that are
11 allocated to that shareholder.

12 MS. KEARNEY: And leaving, Ms. Lewis, the K-1 up on
13 the right, can we pull up page 28 of this exhibit on the left.

14 Q. And, Mr. Nahmes, what is reported in this schedule on the
15 left of your screen?

16 A. It shows the detail of the charitable contributions,
17 indicating that they were cash contributions subject to a 50
18 percent limitation.

19 Q. And does -- do these cash contributions of \$195,000
12:10 20 include the \$100,000 payment to The Key Worldwide Foundation
21 that we saw earlier?

22 A. Yes.

23 Q. Why?

24 A. Because they were charitable contributions on the books of
25 Hyannisport Capital.

1 Q. How would the K-1 for Mr. Wilson change if Hyannisport
2 Capital's business expenses had been reduced by \$120,000?

3 A. The loss, the \$383,000 number, would have been lower.

4 Q. And how would that effect the taxes that Mr. Wilson as a
5 sole shareholder would ultimately owe?

6 A. That would generally increase the tax owed.

7 Q. How would the K-1 for Mr. Wilson change if Hyannisport
8 Capital's charitable contributions had been reduced by
9 \$100,000?

12:11 10 A. That would increase taxable income.

11 Q. And how would that affect Mr. Wilson's taxes?

12 A. That would increase the amount of tax paid on the
13 individual return.

14 Q. And when preparing a tax return, who do you rely on to
15 provide you with the information necessary to determine if a
16 payment should be deducted, either as a business expense or a
17 charitable contribution or in some other fashion?

18 A. The client.

19 MS. KEARNEY: I have nothing further.

12:12 20 THE COURT: Cross-examination, Mr. Kendall.

21 MR. KENDALL: Yes, your Honor.

22 Can I have just a minute to get organized?

23 THE COURT: Yes, you may.

24 CROSS-EXAMINATION OF JAMES NAHMES

25 BY MR. KENDALL:

1 Q. Good afternoon, Mr. Nahmes. How are you?

2 A. Good afternoon. I am well.

3 Q. Good.

4 You flew out from California join us?

5 A. I did.

6 Q. Thank you. I hope to get you done so you can get back
7 this afternoon.

8 A. I would appreciate that.

9 Q. You're a CPA, you told us that.

12:13 10 Do you want to explain what it means to be a CPA?

11 A. A CPA is a Certified Public Accountant. We are required
12 to have certain educational background, a college degree. You
13 have to have two years of experience in public accounting, and
14 then you have to pass a five-part exam.

15 Q. And what types of clients do you work with in your private
16 practice?

17 A. I've worked with a variety of clients over the 40 years
18 from manufacturing companies, consulting businesses, real
19 estate developers, a variety of businesses.

12:14 20 Q. Privately owned companies, not public, I take it?

21 A. Correct, all privately owned.

22 Q. In the past have you worked with sub S corporations?

23 A. I have.

24 Q. Exactly who referred you to Hyannisport Capital?

25 A. It was a colleague of mine.

1 Q. And who was your first contact?

2 A. Debbie Rogers.

3 Q. And who is Debbie Rogers?

4 A. Debbie Rogers was the administrative assistant for
5 Hyannisport Capital.

6 Q. And how did the process go of retaining you for HPC? Who
7 did you meet first? Who did you talk to? What happened?

8 A. We scheduled an appointment and I went to the home office
9 of Mr. Wilson where Debbie worked, and I believe I sat down
10 with Debbie first and had a discussion with her. She explained
11 what types of services were needed and asked me some questions
12 that I don't remember what they were back then, and then I sat
13 down with Mr. Wilson.

14 Q. Okay. And this was back in March 2011?

15 A. That's correct.

16 Q. And you continued to work with HPC for the next eight
17 years?

18 A. Yes.

19 Q. After that first March 2011 meeting, how many times did
12:15 20 you meet Mr. Wilson face to face?

21 A. I don't believe I met him face to face after that initial
22 meeting.

23 Q. Did you meet Debbie Rogers face to face after that?

24 A. Yes, I did.

25 Q. How frequently did you meet Debbie?

1 A. Not very frequently. I would say maybe a half a dozen
2 times.

3 Q. And of your contact over the next eight years, rough
4 percentages, how much was your contact with Debbie and how much
5 of it was with John Wilson?

6 A. Rough percentages, 80/20.

7 Q. Okay. And did that ebb and flow over time?

8 A. Yes.

9 Q. When Mr. Wilson went to Europe and became the president to
12:16 10 Staples, did you notice his schedule was a little more hurried
11 or busy?

12 A. Yes.

13 Q. And he was nine hours away, correct?

14 A. Correct.

15 Q. So Debbie was even more active then?

16 A. She was as active as she had been, but there was a little
17 less direct contact with Mr. Wilson.

18 Q. Okay.

19 A. Because of the time difference.

12:16 20 Q. And when you first came to be introduced, was that at the
21 home in Hillsborough?

22 A. That's correct.

23 Q. John was working from home at that time?

24 A. Yes.

25 Q. Then he went to Europe in 2012. Did you ever go to the

1 HPC address in Atherton, California?

2 A. I did.

3 Q. Two Fleur Place?

4 A. Yes.

5 Q. Could you describe to us what the office looked like for
6 HPC at 2 Fleur Place?

7 A. It was in the back of the house. I could characterize it
8 as a pool house, and --

9 Q. It was a separate building, a separate structure?

12:17 10 A. It was a separate structure from the main house.

11 Q. And how big was it?

12 A. Maybe 30 by 30. I don't -- I don't recall an exact size.

13 Q. One large room, was there also a smaller room and bathroom
14 off of it?

15 A. Again, I don't recall exactly. I know there was one large
16 room where Debbie had her office set up.

17 Q. Okay. And they vacated that by 2016; is that correct?

18 A. That sounds right. I don't know exactly when.

19 Q. And Debbie moved to Nevada, and that's what became HPC's
12:17 20 headquarters after they left the Atherton location?

21 A. That was their mailing address. I believe their
22 headquarters was the Massachusetts address.

23 Q. John's house in Massachusetts.

24 A. Yes.

25 Q. And during the time that Debbie was working out of the

1 Atherton, was that the normal corporate office for mail, for
2 her to sit and do work and take phone calls and things of that
3 nature?

4 A. Yes, it was.

5 Q. You told us you provided two services, you did bookkeeping
6 and you prepared the tax return, correct?

7 A. That's correct.

8 Q. What did the bookkeeping involve?

9 A. The bookkeeping typically involved during the year from
10 time to time Debbie would have questions about how to record
11 certain transactions, but most of the work was done at the year
12 end.

13 Q. And what would you do at year end?

14 A. It's a typical process for accountants to what we call
15 clean up a client's books. They will provide us with the
16 QuickBooks files and the underlying documentation that I would
17 request, and just as an example, I would compare an asset
18 account, say, some investment, to a balance shown on an
19 underlying document. And if there was a discrepancy between
12:19 20 the two, I would record an adjustment so that the books matched
21 the underlying documentation.

22 Q. Is that what you mean when you say you clean up the books?

23 A. Yes.

24 Q. And I take it "clean up" is not a negative concept, it's
25 just putting in organizational order, it's not like there's

1 something bad there?

2 A. Correct, correct.

3 Q. When you refer to QuickBooks, is that where the general
4 ledger is located?

5 A. Yes.

6 Q. Do you want to explain what a general ledger is?

7 A. A general ledger is a document that lists all of a
8 company's transactions for the year.

9 Q. And when you do this cleaning up the books, would Debbie
10 get involved at all to assist you with it?

11 A. Yes, she would.

12 Q. What would she do?

13 A. She would generally answer questions that I had with
14 regard to certain transactions and then provide me with
15 additional documentation or clarification.

16 Q. And how common is it that you provide that service to a
17 client of cleaning up the books at year end or, you know,
18 adjusting the books?

19 A. It's very common. I -- almost every business client I
12:20 20 perform that service for.

21 Q. In the eight years that you worked with HPC, did you ever
22 observe Debbie Rogers try to withhold information from you?

23 A. Not that I remember.

24 Q. Or John Wilson?

25 A. No.

1 Q. Did they follow your advice?

2 A. Not always.

3 Q. When they didn't follow your advice, did it involve an
4 ethical issue or was it just a business decision?

5 A. I don't recall a specific example of when they didn't
6 follow my advice, but it's common to have give and take between
7 client and CPA.

8 Q. Okay. You never had to refuse to sign a return for them,
9 correct?

12:21 10 A. Correct.

11 Q. And that's a sign when a CPA finds there's an ethical
12 problem, correct?

13 A. If they wouldn't sign the return?

14 Q. Yes.

15 A. Yeah, I'm not sure I would characterize it as an ethical
16 problem --

17 Q. But a difference of opinion that was important to the CPA.
18 You never had that is my point.

19 A. Correct.

12:21 20 Q. Okay. Now, if we could put up Exhibit 646, which the
21 government just showed you. That's the -- that's your sort of
22 standard retention letter, fair to say?

23 A. Yes, engagement letter.

24 Q. It's the type you use with many clients?

25 A. Yes.

1 Q. The language there isn't special to Mr. Wilson.

2 If we could go to the very end of the last page.

3 It says, "accepted by John Wilson," but it says
4 "DocuSigned by John Wilson." Fair to say you don't know if
5 Debbie did the DocuSign or John did.

6 A. I assume John did.

7 Q. Okay. But you don't know.

8 A. I do not know.

9 Q. You don't -- be fair to say that Debbie was the person who
10 ran the paperwork in the office and kept things moving?

11 A. Yes.

12 Q. Okay. Now, I want to talk a little bit about a Sub S
13 corporation that Ms. Kearney asked you about during her
14 questioning.

15 Please explain what is a sub S corporation.

16 A. Sub S corporation is what's known as a pass-through
17 entity.

18 Q. Go ahead, please.

19 A. I was going to say, I stated it earlier, that rather than
12:22 20 paying tax itself as an entity, the income and deductions flow
21 through to the shareholders and they pay tax on the income.

22 Q. Okay. One thing about a sub S corporation is it gives the
23 owner, from perhaps what lawyers or others have told you, legal
24 protection, if you sue the company -- if I own a restaurant
25 with a sub S corporation and somebody slips and falls, they can

1 sue the corporation but they can't sue the owner, correct?

2 MS. KEARNEY: Objection, calls for a legal conclusion.

3 THE COURT: He can have that one.

4 A. I understand that that is the case, but I defer to legal
5 people for that.

6 Q. Sure. But it also means there's no double taxation,
7 correct?

8 A. That is correct.

9 Q. Could you explain to the jury what is the issue of double
10 taxation with a C corporation and how an S corporation
11 eliminates that.

12 A. I will do my best.

13 Q. Okay.

14 A. A C corporation, or also known as a regular corporation as
15 opposed to an S corporation, pays tax on its own income. Say a
16 corporation makes \$100,000 profit for the year, and then later
17 they decide they're going to pay a dividend to their
18 shareholders. Well, the company has already paid tax on that
19 \$100,000, then they distribute the earnings to their
12:24 20 shareholders and the shareholders have to pay tax on that
21 income as well, and that's where the term "double taxation"
22 comes from.

23 MR. KENDALL: If we could take a look at Exhibit 9777
24 to the witness only, please. Exhibit 9777.

25 Do we need to do the ELMO?

1 If we could have the ELMO please for the witness only.

2 Q. Do you recognize this document, Mr. Nahmes?

3 A. Give me just a moment.

4 Yes -- well, it's an e-mail that I wrote.

5 Q. And who did you send it to?

6 A. To Debbie Rogers.

7 Q. And does it deal with sub S issues?

8 A. Give me an opportunity to read it here.

9 Okay.

12:26 10 Q. Do you recognize it?

11 A. I do.

12 MR. KENDALL: I'd like to offer that into evidence,
13 your Honor.

14 MS. KEARNEY: Objection, your Honor, it's hearsay.

15 MR. KENDALL: It's his own document.

16 MS. KEARNEY: It doesn't make it not hearsay.

17 THE COURT: Sustained.

18 MR. KENDALL: Your Honor, he can be cross-examined on
19 it; it's not hearsay, your Honor.

12:26 20 MS. KEARNEY: Your Honor, this is about a different
21 entity, first of all.

22 THE COURT: It's hearsay. The objection is sustained.

23 MR. KENDALL: Okay.

24 BY MR. KENDALL:

25 Q. Are you familiar with an entity called Discovery Gateway

1 Spectrum II, DGS II?

2 A. Yes.

3 MS. KEARNEY: Objection, your Honor. This is beyond
4 the scope of the direct.

5 MR. KENDALL: It is not at all, your Honor.

6 THE COURT: I'll let him have that question.

7 BY MR. KENDALL:

8 Q. What entity owned DGS II?

9 A. Hyannisport Capital.

12:27 10 Q. So Hyannisport Capital, a sub S, owned an entity called
11 DGS II, correct?

12 A. I believe, if I recall correctly, that DGS II was owned by
13 the other LLC, DGS, Discovery Gateway Spectrum.

14 Q. Thank you.

15 And that's owned by HPC, correct?

16 A. That was owned by HPC.

17 Q. And DGS II, like HPC, is also a Sub S corporation,
18 correct?

19 A. I believe it was a limited liability company is my
12:27 20 recollection.

21 Q. Thank you.

22 But it's also considered a disregarded entity,
23 correct?

24 A. That is correct.

25 Q. Now, was there a practice at HPC to use -- to make

1 charitable donations at the direction of John Wilson?

2 MS. KEARNEY: Objection.

3 THE COURT: Grounds?

4 MS. KEARNEY: How does this witness know what the
5 practice is?

6 THE COURT: Well, if he knows, he can answer it.

7 A. I know that the company made charitable donations.

8 Q. Okay. You saw that there was a donation in 2014 for
9 \$100,000 to The Key Foundation from HPC, correct?

12:28 10 A. Correct.

11 Q. During that year there were several other charitable
12 contributions made from HPC, correct?

13 A. Yes.

14 Q. Autism Speaks, \$50,000?

15 A. I don't recall the amount. I'd have to look at it.

16 Q. Sure. And in prior years HPC made charitable
17 contributions, correct?

18 A. Yes.

19 Q. So the \$100,000 from The Key Foundation was not the first
12:29 20 charitable contribution that came out of HPC, correct?

21 A. Yes.

22 Q. Okay. And I'd like to show you Exhibit 9775, please.

23 MR. KENDALL: To the witness only.

24 Q. Can you see it?

25 A. No.

1 MR. KENDALL: Can we have the ELMO just for the
2 witness, please.

3 MS. KEARNEY: Do you have a copy for me, please?

4 MR. KENDALL: Yes, right here.

5 If we could show the witness.

6 BY MR. KENDALL:

7 Q. Do you recognize this?

8 A. Yes, I do.

9 Q. And what is it?

12:30 10 A. It's an e-mail I wrote.

11 Q. And who did you send it to?

12 A. Joyce Wang.

13 Q. At the IRS?

14 A. Correct.

15 Q. But also to John Wilson and Debbie Rogers?

16 A. Yes, I copied them on the e-mail.

17 MR. KENDALL: Your Honor, I'd like to offer the
18 exhibit for state of mind, not for the truth of the matter
19 asserted.

12:30 20 MS. KEARNEY: Your Honor, this e-mail appears to
21 concern a matter that defense counsel asked the government to
22 keep out of its exhibits, so I'm concerned as to what
23 Mr. Kendall is doing with that.

24 On top of it, it is being offered --

25 MR. KENDALL: I'll withdraw it, your Honor. I'll just

1 go to the question.

2 BY MR. KENDALL:

3 Q. When HPC makes charitable contributions, did you ever have
4 an issue of whether the paperwork was in John's name or the
5 paperwork was in HPC's name, whether the money came from an HPC
6 account or it came from John's account, so -- could you explain
7 if that issue came up and what was its significance?

8 A. I recall at least one instance where the name on the
9 receipt was not in the name of the S corporation.

12:31 10 Q. Okay. And what does that mean? What's the significance
11 of that?

12 A. The charitable donation, I would like to see it in the
13 name of the corporation if the corporation paid the charitable
14 donation.

15 Q. Okay. In the end it's going to flow through to the
16 individual's return but in terms of paperwork, you want to have
17 it aligned in the books, correct?

18 A. Yes.

19 Q. Okay. But in the end, if it's a donation, it's going to
12:31 20 show up on the Schedule A for Mr. Wilson's personal 1040,
21 correct?

22 A. Yes.

23 Q. I'd like to show you Exhibit 9778, please.

24 MR. KENDALL: Just to the witness.

25 Q. And do you recognize this e-mail?

1 A. Yes, I do.

2 Q. Okay. Are you --

3 MR. KENDALL: Mr. Carter, are you okay to do things
4 now?

5 MR. CARTER: Yes.

6 MR. KENDALL: I'll turn this off.

7 BY MR. KENDALL:

8 Q. What is this?

9 A. It's an e-mail to Debbie Rogers.

12:33 10 Q. Concerning what?

11 MS. KEARNEY: Objection. It's not in evidence.

12 MR. KENDALL: Your Honor, I'd like to put it into
13 evidence.

14 MS. KEARNEY: Your Honor, I object again. This is
15 hearsay. It also appears that Mr. Kendall is trying to put in
16 a number of exhibits not to impeach and these exhibits were not
17 provided to the government in advance.

18 MR. KENDALL: Your Honor, cross-examination materials
19 don't have to be --

12:33 20 THE COURT: Yes.

21 MR. KENDALL: But this is to explain the testimony
22 that she brought out that has a broader base than what she's
23 given.

24 THE COURT: The objection is sustained. You can put
25 it in front of the witness to refresh his memory if that's what

1 you're trying to do, but the document itself will not be
2 admitted.

3 MR. KENDALL: Okay.

4 BY MR. KENDALL:

5 Q. Does this document refresh you that in 2013 you were
6 working with Debbie on this issue of getting the charitable
7 donations aligned so that the receipt and the account where it
8 came from were aligned, whether it would be John or the sub S
9 corporation?

12:34 10 A. Yes.

11 Q. If you have your own way to describe that process, it
12 might be clearer than what I'm using, if you want to phrase it
13 in your own words.

14 A. As I stated before, I would like to see the underlying
15 documentation match the expend -- match the expenditure on the
16 books. So if Hyannisport Capital made a contribution from its
17 bank account, I would like to see their name on the charitable
18 contribution receipt.

19 Q. The -- what you described earlier was the process of
12:34 20 cleaning up the books or getting the accounting cleaned up, did
21 that sometimes involve the charitable contributions?

22 A. I'm sorry, excuse me?

23 Q. You discussed earlier the service you provided of getting
24 the accounting entries in order and correcting and updating
25 them from what Debbie had done.

1 A. Right.

2 Q. And you did that on an annual basis for HPC as well as
3 other clients.

4 A. Yes.

5 Q. Okay. Did that also involve doing those tasks for the
6 charitable contributions?

7 A. Those were things I noted and brought up to Debbie's
8 attention.

9 Q. And would she have to go get the paperwork from the
10 charitable contributions to give to you to finish the
11 correcting of the accounting detail?

12 A. Yes, that did happen.

13 MR. KENDALL: I'd like to show you a copy of Exhibit
14 9779 for the witness only.

15 Q. Is this an e-mail that you recognize?

16 A. Yes.

17 Q. Okay. And does this deal with running down the charitable
18 receipts?

19 A. I believe so.

12:36 20 MR. KENDALL: Your Honor, I'd like to offer this into
21 evidence.

22 MS. KEARNEY: Same objection, your Honor.

23 THE COURT: The objection is sustained. Again, it can
24 be used to refresh memory.

25 BY MR. KENDALL:

1 Q. Does that refresh your memory that in September of 2013,
2 Debbie for that year's tax returns was running down charitable
3 receipts so you could clean up the books as you've described?

4 A. Yes. It was not necessarily cleaning up the books as it
5 was having proper documentation in the work papers.

6 Q. Now, in fact, when you were first retained, you had to do
7 this process of cleaning up all of the books and transactions
8 for years prior to when were you engaged. Do you remember
9 doing a multiyear cleanup for HPC?

12:37 10 A. Yes, for certain accounts on the books. But that was not
11 something that I was hired to do at the inception of my
12 relationship. It came upon later.

13 Q. Do you remember finishing it in early 2015?

14 A. I don't know the exact date, but that could very well be.

15 Q. Okay. Now, in preparing the 2014 tax returns, do you
16 remember there was problems with the receipts for some of the
17 charitable contributions?

18 A. I believe there was.

19 Q. Okay. I'd like to show you -- the witness only -- Exhibit
12:38 20 9783.

21 If you could take a look at that, please.

22 A. I don't see anything on the screen.

23 MR. KENDALL: Why don't we give a copy to the witness
24 as well so he can look through the entire thing.

25 THE WITNESS: It's up now.

1 MR. KENDALL: But it's three pages. It will be easier
2 for you to look through.

3 MS. PAPENHAUSEN: May I?

4 THE COURT: Yes.

5 THE WITNESS: Thank you.

6 BY MR. KENDALL:

7 Q. If you could take a look at that and tell us after you're
8 done reading it to yourself if that refreshes your recollection
9 about a \$50,000 receipt for Autism Speaks for the 2014 tax
10 year.

11 A. Okay, I've read the document.

12 Q. Does this refresh your recollection of what happened with
13 the Autism Speaks receipt for 2014?

14 A. Yes.

15 MS. KEARNEY: If the witness can be instructed to put
16 the document down, your Honor.

17 THE COURT: Yes, yes.

18 BY MR. KENDALL:

19 Q. If you could put the document down and tell us what you
20 remember about that receipt.

21 A. I don't recall specifically what -- it appears that from
22 the document that that receipt was missing --

23 MS. KEARNEY: Objection, your Honor.

24 THE COURT: If it doesn't refresh your memory, then
25 you can't testify to it.

1 BY MR. KENDALL:

2 Q. Would reading it a little more closely help you refresh
3 your memory to it?

4 This is an e-mail you sent, correct?

5 A. It was an e-mail --

6 THE COURT: No, no, put the document down, please.

7 And then ask your question, Mr. Kendall.

8 BY MR. KENDALL:

9 Q. Do you recall that there was a \$50,000 donation to Autism
12:40 10 Speaks in 2014?

11 A. I would have to look at the work papers.

12 Q. For the amount. You recall there was a contribution,
13 though, for Autism Speaks?

14 A. Yes.

15 Q. And John made contributions to Autism Speaks for many
16 years, correct?

17 A. Yes.

18 Q. It was one of the common charities he supported.

19 A. I recall that.

12:40 20 Q. And you recall in 2014 there was some problems with the
21 receipts, that Debbie had to run down additional paperwork for
22 the Autism Speaks donation.

23 A. Yes.

24 Q. Okay.

25 For the \$100,000 donation listed to The Key

1 Foundation, when you saw that, did you do anything in
2 particular?

3 A. I read the document, and I was not familiar with that
4 organization, so I looked it up on the -- there is an IRS
5 website that lists 501(c)(3) organizations. And I looked -- I
6 looked it up and recall finding it there.

7 Q. You found The Key Foundation on the IRS website. And what
8 was the purpose of you looking it up?

9 A. To ensure that it had been -- or it was in the process of
12:42 10 being approved by the IRS.

11 Q. And so, therefore, it was authorized to take charitable
12 contributions?

13 A. Yes.

14 Q. Okay.

15 MR. KENDALL: Could we show the witness what's already
16 in evidence Exhibit 126, please?

17 If we could show him page 2.

18 Q. Would it be fair to say that the standard practice was for
19 Debbie to send you copies of the receipts for charitable
12:42 20 contributions?

21 A. Yes.

22 Q. Okay. Did you ever get this one?

23 MS. KEARNEY: Objection, your Honor, to the
24 characterization of this as a receipt.

25 THE COURT: Yes, sustained.

1 MR. KENDALL: I'll rephrase, your Honor.

2 BY MR. KENDALL:

3 Q. Did you ever get a copy of the letter that's Exhibit 126?

4 A. I did not.

5 Q. Okay. It says, "Thank you for your generous gift to USC
6 athletic men's water polo in the amount of \$100,000.

7 Maintaining state-of-the-art facilities is an essential part of
8 USC's commitment to excellence. Through your contribution, you
9 are helping the University achieve this important goal.

12:43 10 "On behalf of the young student athletes that will
11 benefit from your anonymous gift, thank you.

12 "Fight on!

13 "Ron Orr."

14 Was it your practice if you received gift notices or
15 documents referring to gifts or contributions in the range of
16 \$100,000 you would look at them in the accounting books and
17 check them?

18 A. Yes.

19 Q. And if you had found this and found that had it been
12:44 20 booked as a business consulting instead of a charitable
21 contribution, would you have raised it with Debbie?

22 A. Yes.

23 Q. And because you never got this letter, you never had the
24 reminder to raise it with Debbie, fair to say?

25 A. Yes.

1 Q. Okay.

2 I'd like to show you next Exhibit 9776.

3 Do you recognize that document?

4 MR. KENDALL: For the witness only.

5 A. I do.

6 Q. And what is it?

7 A. These are my notes that I make while preparing the books
8 and tax return for Hyannisport Capital.

9 MR. KENDALL: I'd like to offer this into evidence,
12:44 10 your Honor.

11 MS. KEARNEY: No objection.

12 THE COURT: It will be admitted without objection.

13 (Exhibit 9776 received into evidence.)

14 MR. KENDALL: If we could show the jury Exhibit 9976.

15 BY MR. KENDALL:

16 Q. I take it it's your handwriting?

17 A. Yes, it is.

18 Q. Did they teach you in CPA school to have such fine, small
19 handwriting?

12:45 20 A. No, it came to me somehow.

21 Q. And is this a list of tasks that you made for yourself to
22 follow up on after looking at the books and records that had
23 been sent over to you by Debbie?

24 A. That's correct.

25 Q. And I can see there's checks -- we can see there's checks

1 on some of the numbers or lines drawn through them. Is that
2 you marking taking care of that task?

3 A. My system has changed over the years. That may have meant
4 that I asked Debbie for those documents.

5 Q. Okay. I want to you take a look now at Exhibit 122,
6 please, which is already in evidence.

7 Now, this is an e-mail from Mr. Wilson to Debbie
8 Rogers on July 2014. It's just a couple of months after the
9 date of those invoices you were shown for consulting.

12:46 10 MR. KENDALL: I want to go to the bottom of this
11 document, if we can, Mr. Carter.

12 Q. And you see "big incomes" there.

13 MR. KENDALL: Can we do the next three lines?

14 Q. DGS net sales \$2 million, Franklin \$440K, Staples \$800K
15 with bonus.

16 "DGS net sales," is that the LLC or whatever it is
17 that HPC owns?

18 A. I believe that's what it's referring to.

19 Q. And what is Franklin \$450,000? Was that a response -- was
12:46 20 that a board membership Mr. Wilson had?

21 MS. KEARNEY: Your Honor, I'm going to object to this
22 line of questioning. This witness is not on this e-mail and he
23 has testified he did not prepare Mr. Wilson's personal tax
24 returns to have a foundation for this.

25 MR. KENDALL: Your Honor, I need two questions.

1 Just simply --

2 THE COURT: If he knows, he can answer.

3 BY MR. KENDALL:

4 Q. Do you know if Mr. Wilson had some involvement with the
5 Franklin Templeton Funds as a board member?

6 A. Yes, I was aware of that.

7 Q. And you know he worked at Staples, correct?

8 A. Yes.

9 Q. So if we do the math there, basically a little bit less
10 than two-thirds of his big income is in DGS net sales, correct?

11 A. Correct.

12 Q. Which is captured within HPC, correct?

13 A. Yes.

14 Q. So when he is writing -- or he's transferring money for
15 \$100,000 checks to various things, that's the largest source of
16 cash he appears to have available, correct, something in HPC?

17 MS. KEARNEY: Objection, your Honor.

18 THE COURT: Sustained.

19 BY MR. KENDALL:

12:48 20 Q. Okay. I'd now like to go to your work papers, Exhibit
21 134, please.

22 And there is the exhibit you just went through with
23 Ms. Kearney. Do you remember that?

24 A. Yes.

25 MR. KENDALL: Mr. Carter, I'd like to go to page 3

1 where that fine print is again.

2 And if we could go to the middle of the page where it
3 says "gross profit expenses," and blow that up a bit so that we
4 can read it.

5 And if you could raise that.

6 Q. It says "gross profit" at the top, and then if we drop
7 one, two, three, four, five lines down, it says "consulting
8 general business \$120,000," correct?

9 A. Yes.

12:48 10 Q. Okay. So that's the \$120,000 expense that was booked as a
11 general business expense.

12 If, in fact, that was a charitable contribution, that
13 should be lowered down on this list but under -- still under
14 "expense," correct?

15 A. On the company's books, yes.

16 Q. Okay.

17 MR. KENDALL: If we could go further back down this
18 list, and if you just go a little bit lower and just do that
19 next section.

12:49 20 And if we see here -- it's hard to -- you see "total
21 DGS expenses" and under that "donations," correct?

22 A. Correct.

23 Q. So if that was a charitable contribution and not a
24 business expense, that 169 would go down by 120,000 and
25 donations would go up by 120,000, correct?

1 A. I'm not sure the consulting is included in that 169.

2 Q. You know what, you're absolutely right. I'm sorry about
3 that.

4 Let's go up a little higher. I appreciate you
5 pointing that out.

6 If we take a look here, the total consulting of 133,
7 that would go down 120,000 and then the donations would go up
8 120,000, correct?

9 A. Could you repeat the question as you started it?

12:50 10 Q. If we see where it says "consulting general business
11 120,000" --

12 A. Yes.

13 Q. -- if that was improperly or incorrectly booked and it
14 really is a charitable contribution, that total consulting
15 number should go down by 120,000, correct?

16 A. Correct.

17 Q. And the donations should go up by 120,000.

18 A. Correct.

19 Q. Okay. Now, these numbers carry over to the personal tax
12:51 20 return, correct?

21 A. Right.

22 Q. So what it would mean on the tax return is that the income
23 number would go up by \$120,000 because you reduce the loss by
24 \$120,000, correct? Taxable income would go up 120,000?

25 A. Yes.

1 Q. But then, on the Schedule A for charitable contributions,
2 the deductible charitable contribution would go up \$120,000,
3 correct?

4 A. Yes.

5 Q. So what you're doing is you're increasing -- when do you a
6 tax return, it's a series of computations, correct?

7 A. Yes.

8 Q. You add things, you subtract things, you multiply things,
9 and you do these computations so you get the final number,
10 correct?

12:51

11 A. Yes.

12 Q. So what we're talking about here is the income number
13 should have been a little higher in the beginning, but if it's
14 a charitable contribution, the deduction is bigger towards the
15 end, correct?

16 A. Yes.

17 Q. And they're both by the same gross number of \$120,000,
18 correct?

19 A. Yes.

12:52

20 Q. But you can't tell what impact it will have on the
21 computation until you know all the numbers, correct?

22 A. Yes.

23 Q. So if I were -- no person in March of 2014 could predict
24 if those numbers move, would you save money or not save money
25 on your taxes because you need all the numbers at year end to

1 do the calculation, correct?

2 MS. KEARNEY: Objection as to what someone could
3 predict.

4 THE COURT: Yes, that part is sustained.

5 BY MR. KENDALL:

6 Q. In order to calculate if you could have had any positive
7 impact by putting a charitable contribution as a business
8 deduction, what numbers would you need to do the calculation?

9 A. What impact it would have on the individual return?

12:53 10 Q. Yes, on the person's 1040.

11 A. You would need all items of income and deductions for that
12 year.

13 Q. And are those numbers available in March of 2014?

14 A. No.

15 Q. Okay. I'd like to go to in the same exhibit to Bates --
16 the Bates number ending 3407.

17 It's a long exhibit.

18 3407, please.

19 Perfect.

12:54 20 Okay.

21 Could you tell us what is this "W-1"?

22 I take it that's your handwriting.

23 A. Yes, that's just a reference number, a sequence number for
24 the work papers.

25 Q. Okay. And this is a list of the donations that were put

1 down for Hyannisport Capital. One is the Menlo School for
2 \$35,000.

3 A. Right.

4 Q. Do you know that to be where Johnny went to high school?

5 A. I did know that.

6 Q. Okay. Then it says Society For the Preservation of Theta
7 XI at RPI. Do you understand "RPI" is Rensselaer Polytechnic
8 Institution?

9 A. I'm not aware of that.

12:54 10 Q. You're not aware it's Mr. Wilson's college?

11 Okay. But there's a \$10,000 donation there.

12 And then there's the \$100,000 to The Key Worldwide,
13 and then there's \$50,000 for Autism Speaks.

14 And if, in fact, that \$120,000 business consulting was
15 a mistake and a true charitable donation, we would have
16 included it here, correct?

17 A. Yes.

18 Q. Okay.

19 Now, that letter I showed you earlier, the letter that
12:55 20 said, Thank you for the \$100,000 to USC, that did not have that
21 language, no goods or services were delivered or no goods or
22 services were exchanged.

23 Are you familiar that sometimes charities give that
24 language in a separate document, not in the thank you note
25 itself?

1 A. Yes.

2 Q. They can do it any way they want, correct -- strike that.

3 They can put them all in one document or they can
4 separate them in two documents.

5 A. I've seen them in two documents, yes.

6 Q. So if a person were to get a thank you note without that
7 language, it wouldn't necessarily be alarming because the
8 charity may just be sending a separate document.

9 A. That's possible.

12:56 10 Q. But you'd have to run it down when you're doing the tax
11 returns.

12 A. Correct.

13 Q. Okay. Now, if we could go to the next page, please.

14 We see that's a March 6 letter to the Wilsons from the
15 Menlo School. And it says, "Thank you so much for your recent
16 gift of \$35,000 through Discovery Gateway Spectrum II LLC to
17 Menlo School."

18 This is on the HPC return, but the \$35,000 came out of
19 DGS II which we saw had the \$2 million, correct?

12:57 20 A. That's what it indicates in the letter.

21 Q. Okay. And if we look at the bottom of this letter, it has
22 that language: "For tax purposes we acknowledge no goods or
23 services."

24 So they put it all in one document, correct?

25 A. Yes.

1 MR. KENDALL: Now, if we could go over two pages,
2 Mr. Carter, to the Bates ending 3410 -- Denise McAdoo there.

3 Q. Now, I want to go to the middle of that page.

4 You see there it says, "Wilson documentation." And
5 this relates to the \$35,000 amount from the -- that was given
6 to the Menlo School.

7 Actually, let's go to the top so we can see the top of
8 the e-mail, it's the Menlo School.

9 You see that, it's Denise McAdoo of the Menlo School
10 talking about Wilson documentation for the gift, correct?

11 A. Yes.

12 Q. Now, could we go to the bottom of that page, and look at
13 that line right there.

14 It says, "Debbie, the last installment was made on
15 2/12/13. No payments have been received in 2014."

16 Based upon your 40-plus years or around 40 years as a
17 CPA, is there anything inappropriate about referring to a
18 charitable contribution as a payment?

19 A. Not in an e-mail like this.

12:58 20 Q. Okay. It's just the monies got to go from one person to
21 another place for the charitable contribution, correct?

22 A. Say that again?

23 Q. "Payment" just means you're giving them the money,
24 correct? It means it's common understanding, correct?

25 A. If you're using the term that way.

1 Q. Okay.

2 A. I could understand it.

3 Q. If we could go to the top of the next page, please.

4 And if we look there it says, February 28, 2014 where
5 Debbie writes to the person at the Menlo School, "Hi Denise,
6 before I send the \$35,000 I want to make sure there have been
7 no payments received this year."

8 Did I read that correctly?

9 A. Yes.

12:59 10 Q. Okay.

11 And if we drop down to the next e-mail message, going
12 back and forth where she writes, "Going back and forth with
13 John this morning, he seems to think he made a payment this
14 year, can you double check. I just want to be sure we have all
15 payments towards this commitment accounted for."

16 Did you see that?

17 A. Yes.

18 Q. Okay.

19 MR. KENDALL: If you could turn the next e-mail,
01:00 20 please, and go down to the next page, actually, Mr. Carter.
21 Right there.

22 Q. It says, "Good morning, Denise" -- and again, they're
23 using the word "payment" and "payable" for a charitable
24 donation, correct?

25 A. Yes, they are.

1 THE COURT: All right. We're going to break for lunch
2 at this stage.

3 You may step down for the time being, Mr. Nahmes.

4 We'll be in recess for one hour, jurors. I'll ask you
5 to return then.

6 THE CLERK: All rise for the jury.

7 (Jury left the courtroom.)

8 THE COURT: Be seated, counsel.

9 You may step down, Mr. Nahmes, for the time being.

01:01 10 THE WITNESS: Thank you.

11 THE COURT: How much longer on cross, Mr. Kendall?

12 MR. KENDALL: I'd guess, your Honor, 25 to 40 minutes,
13 somewhere in that range. I've got to flip through my notes,
14 but I'm more than halfway through.

15 THE COURT: All right. And then we are going to go to
16 Mr. Masera; is that right?

17 MS. KEARNEY: Mr. DeMaio.

18 THE COURT: All right, Mr. DeMaio. Then we will not
19 get through his testimony this afternoon.

01:01 20 MS. KEARNEY: I don't think so.

21 THE COURT: Is there anything else that needs to come
22 to my attention before we recess? If not, we are in recess
23 until 2:00.

24 THE CLERK: All rise.

25 (Recess taken 1:02 p.m. to 2:05 p.m.)

1 THE CLERK: Thank you. You may be seated. Court is
2 now in session.

3 THE COURT: Good afternoon, jurors. We're ready to
4 pick up again.

5 Mr. Nahmens, you're reminded that you remain under
6 oath.

7 Mr. Kendall, you may continue with cross-examination.

8 MR. KENDALL: Thank you, your Honor.

9 BY MR. KENDALL:

02:06 10 Q. Mr. Nahmens, I want to continue going through Exhibit 134,
11 your work papers. Just to clarify a couple of points, if you
12 had gotten that thank you letter from USC at the time you were
13 putting together these work papers, you would have raised it
14 with Debbie, correct?

15 A. Would have raised?

16 Q. If you got that letter that said thank you for the
17 \$100,000, you would have said something to Debbie, correct, and
18 to ask her to explain to you what it was for and figure out
19 what it was for?

02:06 20 A. Yes.

21 Q. Okay. And would it be fair to say Debbie is the one who
22 did all of the Quickbooks classifications? John wasn't there
23 putting in the entries to Quickbooks.

24 A. That's my understanding.

25 Q. Yeah. And when you would send back corrections for the

1 Quickbooks, you'd send them to Debbie for her to adopt,
2 correct?

3 A. Yes.

4 Q. As a general practice for forwarding your paperwork and
5 e-mails and receipts, that was Debbie, correct?

6 A. Mr. Wilson forwarded me e-mails as well, from time to
7 time.

8 Q. Excuse me. Let me take back e-mails. Receipts,
9 documents, backup accounting detail.

02:07 10 A. Yes.

11 Q. That would be Debbie, correct?

12 A. Yes.

13 Q. John wasn't in Amsterdam at Staples headquarters e-mailing
14 you a receipt for a \$500,000 charitable contribution?

15 A. That's correct.

16 Q. I'd like to show you exhibit --

17 MR. KENDALL: If we can put up Exhibit 118 for a
18 minute. It's already in evidence.

19 Q. I want to show you -- this is an e-mail you've never
02:07 20 received, but it's in evidence. This is from Rick Singer, the
21 man who got that \$20,000 that you discussed doing the tax form
22 for.

23 MR. KENDALL: If we can go up to the middle of it.

24 Q. It says -- in the middle, we see Rick Singer, April 10th,
25 at 2:14 p.m. He says, "I think the money that came was from

1 Wilson's? Did we charge both extra 20 for expenses?" I think
2 it's supposed to say, "If so great, if not fine, too".

3 If you had been informed that that \$20,000 payment
4 that was eventually sent to Rick Singer was supposed to cover
5 expenses of the Key Foundation, would that be an appropriate
6 thing to put down as a donation? If you're going to pay the
7 expenses of a 501(c)(3) organization.

8 A. You're saying would it make a valid charitable
9 contribution?

02:09 10 Q. Yes.

11 A. If it met the IRS standards for such.

12 Q. Sure. You know, you see when you make a contribution to
13 somebody by credit card, they sometimes say could you pay an
14 extra \$5 to cover the credit card expense. Are you familiar
15 with that?

16 A. Yes.

17 Q. There's nothing wrong with, in addition to your donation,
18 to pay part of the expenses of the charity as well to help
19 cover their overhead?

02:09 20 A. Nothing wrong with that.

21 Q. Thank you.

22 I'd like to go back then into Exhibit 134. And let's
23 go further to past where we were to the bates ending in 3416.
24 You see here there's a -- do you recognize this from your work
25 papers? You see the W-10 up at the top?

1 A. Yes.

2 Q. Okay. Now, if we go to the top, it says "for good and
3 valuable consideration." It says the Theta Xi Association of
4 Troy, New York. Are you aware that Rensselaer Polytechnic
5 Institute is in Troy, New York?

6 A. No.

7 Q. Okay. Well, whatever it is. This is a bill from a
8 charitable organization using the word "payable", correct?

9 A. Yes.

02:10 10 MR. KENDALL: And if we go to the bottom of this page,
11 Mr. Carter, to the left side.

12 Q. It says "make checks payable" and for a tax-deductible
13 purpose, correct?

14 A. Yes.

15 Q. Now, if we could go flip one, two pages, actually,
16 three pages, please, to receipt of the letter from The Geier
17 Group. You see The Geier Group. It's dated December 12, 2014.
18 "Dear John, I want to personally thank you for your generous
19 gift of \$50,000 to Autism Speaks".

02:11 20 Now, if we look at this letter in its entirety,
21 there's no language that says no gifts or services. Do you see
22 that? No gifts or services were provided in exchange?

23 A. Correct.

24 Q. So that's an example of a thank you letter for a
25 charitable contribution that doesn't have the language,

1 correct?

2 A. It's -- it's a -- yes, a thank you letter.

3 Q. Okay. And it's the response -- and under the Internal
4 Revenue Code, it's the responsibility of the charity to send
5 the letter saying whether there are no goods or services
6 exchanged, or what's the value of the goods and services
7 exchanged?

8 A. Yes.

9 Q. So, for example, if -- let's say the Cancer Society is
02:12 10 having a fundraiser dinner and it's \$1,000 a ticket and it's at
11 a very fancy restaurant where the meal costs \$100, they're
12 going to send a receipt saying, you gave us \$1,000, but the
13 cost of your meal was \$100, so your donation was \$900, correct?

14 A. Right.

15 Q. And the Internal Revenue Code puts the obligation to send
16 that notice on the charity receiving the donation, correct?

17 A. Yes.

18 Q. Now --

19 A. Let me restate. I'm not sure it's the Internal Revenue
02:13 20 Code, but it could be the regulations.

21 Q. Thank you very much. The regulations is sort of another
22 part of the IRS.

23 A. Yes.

24 Q. I appreciate the clarity.

25 Now, anywhere -- and they have to put a value on the

1 meal, correct?

2 A. Correct.

3 Q. They have to do a market value, like you know, that's what
4 it is on their menu so they know it's \$100?

5 A. Yes.

6 Q. Or they have to look at a comparable transaction if there
7 isn't a market price?

8 A. Correct.

9 Q. Is there anywhere in these work papers a deduction for the
02:13 10 rental expense of HPC's headquarters?

11 A. I would have to go back through it, but my recollection is
12 that for this year it was not.

13 Q. Okay. Didn't John raise that issue with you, whether or
14 not he could take a deduction for the rent?

15 A. He raised it to Debbie, who forwarded me that request.

16 Q. Okay. And you -- can you tell us what happened on that
17 issue of the rent for the 2014 year?

18 A. The best I recall, I responded that -- initially, that it
19 would be possible to have a reimbursement arrangement whereby
02:14 20 the corporation would reimburse a portion of the rent that
21 applied to the office.

22 Q. John never followed up in pursuing rent for HPC, correct?

23 A. Not that I was aware of.

24 Q. For '14, '15 and '16 when they were renting the Atherton
25 house, correct?

1 A. Not that I recall.

2 Q. Okay. I want to now turn to the last page, I think we're
3 going to cover in Exhibit 134. Could we go to the bates ending
4 in 3434. It says "Hyannis Port Capital, Inc. Journal".

5 MR. KENDALL: If we could turn that around. Thank
6 you, Mr. Carter.

7 Q. What does this document show?

8 A. These are the journal entries that I made to, as we
9 discussed before, to clean up the books.

02:15 10 Q. These are corrections you're making in Debbie's entries or
11 bookings of various transactions?

12 A. It's beyond that. Some of them are corrections. Some of
13 them are entries to record transactions that are more technical
14 than would be recorded, you know, just recording transactions
15 from a bank account or a credit card.

16 Q. Okay. If we could go to the next page, 2, these are more
17 of those corrections we just discussed?

18 A. Yes, corrections and original entries.

19 Q. Okay. If I were to suggest to you they count up to about
02:16 20 61 lines in those two pages, would that seem reasonable to you?

21 A. Well, that seems somewhat close.

22 Q. And are these the type of corrections or additional
23 entries you would recommend each year?

24 A. Yes. They -- they tend to be similar from year to year.

25 Q. And if you had discovered that they had booked a -- they

1 had booked a charitable deduction mistakenly as a business
2 deduction, would that have been sort of reclassified in these
3 pages?

4 A. Most likely.

5 Q. If we can take a look at Exhibit 164. I'm not sure if
6 that's -- maybe we don't need an exhibit.

7 Who would you send the tax returns to, to Debbie,
8 didn't you?

9 A. For signature?

02:17 10 Q. Yes.

11 A. Yes.

12 Q. Okay. And then she'd arrange it with John to get it done?

13 A. To sign and e-file.

14 Q. Sign and take care of them.

15 Now, the last thing I want to cover with you, it's
16 only going to take us a couple of minutes is, in 2018, John
17 contacted you about the million dollars he was donating to the
18 Key Foundation, correct?

19 A. It was either John or Debbie contacted me.

02:17 20 Q. Yeah. But they e-mailed you wanting your tax advice and
21 then that issue was really referred over to Mr. DeMaio,
22 correct?

23 A. They didn't want my tax advice about the contribution
24 itself. It was, I believe -- if I remember correctly, it was a
25 technicality related to the receipt, the acknowledgment.

1 MR. KENDALL: Okay. If I may have just one moment,
2 your Honor.

3 THE COURT: Yes.

4 MR. KENDALL: Thank you, your Honor. No further
5 questions.

6 THE COURT: Mr. Kelly.

7 MR. KELLY: No questions.

8 THE COURT: Miss Kearney, any redirect?

9 MS. KEARNEY: Yes, your Honor.

02:18 10 REDIRECT EXAMINATION OF JAMES NAHMENS

11 BY MS. KEARNEY:

12 Q. Good afternoon, Mr. Nahmens.

13 A. Good afternoon.

14 Q. During his questioning, Mr. Kendall asked you whether
15 Hyannis Port Capital had a practice to make donations. Do you
16 remember that question?

17 A. I'm not sure those were the exact words, but there was a
18 question similar to that.

19 Q. Do you recall that Hyannis Port Capital had made no
02:19 20 charitable contributions in 2013?

21 A. I don't recall specifically.

22 Q. Would it refresh your recollection to look at the 2013
23 return?

24 A. Yes.

25 MS. KEARNEY: May I approach, your Honor?

1 THE COURT: Yes.

2 Q. Mr. Nahmens, I handed you the 2013 Hyannis Port Capital
3 return. Do you want to take a minute to look at that?

4 A. With regard to the charitable contributions?

5 Q. Yes, please.

6 A. Okay.

7 Q. Having looked at that return, is your memory refreshed as
8 to whether Hyannis Port Capital had any charitable
9 contributions in tax year 2013?

02:21 10 A. It appears there were none.

11 Q. And then do you recall whether Hyannis Port Capital had
12 any charitable donations in 2015?

13 A. I do not recall.

14 Q. Okay. In front of you is the 2015 tax return. Do you
15 want to take a look at that and see if that refreshes your
16 recollection as to whether Hyannis Port Capital had any
17 charitable donations in 2015?

18 A. It appears not.

19 Q. Do you recall whether Hyannis Port Capital had only
02:22 20 \$10,000 worth of donations in 2016?

21 A. No.

22 Q. Would it refresh your recollection to look at the 2016
23 return that's also in front of you?

24 A. Yes.

25 Q. Could you take a look at that and see if looking at the

1 2016 return refreshes your recollection as to whether Hyannis
2 Port Capital had only \$10,000 in donations in 2016?

3 A. Yes. That's correct.

4 Q. And do you recall whether Hyannis Port Capital had any
5 charitable donations in 2017?

6 A. I do not.

7 Q. Would it refresh your recollection to look at the 2017
8 return?

9 A. Yes.

02:22 10 Q. And that is also in front of you.

11 A. It appears there is none.

12 Q. Mr. Nahmens, Mr. Kendall asked you a number of questions
13 about a letter from USC regarding a \$100,000 donation?

14 A. Yes.

15 Q. And he suggested that you sometimes had to work with
16 Miss Rogers to get tax receipts cleared up?

17 A. Yes.

18 MS. KEARNEY: Miss Lewis, if we can pull up
19 Exhibit 134 in evidence, and go to page 96.

02:23 20 Q. Mr. Nahmens, was there anything to clear up about that
21 \$100,000 payment, given that you had a copy of an invoice that
22 corresponded to that payment?

23 A. No. Based on the document that I've seen, I've got it
24 documented as showing an expenditure on the books.

25 MS. KEARNY: And if we can look at page 95,

1 Miss Lewis.

2 Q. Mr. Nahmens, was there anything to clear up given that you
3 had a copy of an invoice that corresponded to a \$20,000 payment
4 to Rick Singer?

5 A. No. Same as the other one. I forgot to mention the 1099
6 miscellaneous issue, that that was something that I believe
7 once I saw these it reminded me of that as well.

8 Q. Once you saw the invoices, it reminded you --

9 A. I can't remember if it was when I saw these invoices or I
02:24 10 saw the expenditure on the general ledger. It was one or the
11 other most likely.

12 Q. And would you have completed 1099s for charitable
13 donations?

14 A. No.

15 Q. Let's look at Exhibit 134 on page 3. If we can blow up
16 under the "Expense" category, Miss Lewis.

17 Mr. Nahmens, Mr. Kendall asked you a number of
18 questions about whether or not the consulting fees had been
19 reduced and the donations had been increased, it would all wind
02:25 20 up under expenses, correct?

21 A. The way I remember the question is -- yes, that's correct.
22 It would be an expense of the corporation on the books.

23 Q. But what is the -- let me rephrase that.

24 If an amount was moved from consulting to donations,
25 those donations could not be taken as business expenses on the

1 tax return, correct?

2 A. Correct. I was just stating that they would be
3 reclassified on the books.

4 Q. And is it -- is there any difference between reporting a
5 deduction as a business expense versus a charitable donation?

6 A. Yes.

7 Q. What's that difference?

8 A. The business expenses go into the calculation of ordinary
9 business income, whereas the charitable contributions are
02:26 10 considered what's called a separately stated item and are
11 reported separately from the net business income.

12 Q. They're reported on a Schedule A of itemized deductions?

13 A. Once they get to the individual return, yes.

14 Q. And business expenses are, fair to say, 100 percent
15 deductible from income?

16 A. Generally.

17 Q. Are there limits on itemized deductions?

18 A. Yes.

19 Q. Such that once the taxpayer surpasses a certain limit,
02:27 20 deductions for expenses above that amount are phased out?

21 A. In certain years that was true.

22 Q. And in March of -- or April of 2014, a taxpayer would
23 understand that a business expense would be a hundred percent
24 deductible, but wouldn't yet know whether a charitable
25 deduction would be 100 percent deductible?

1 MR. KENDALL: Objection.

2 THE COURT: Overruled -- well, what's the objection?

3 MR. KENDALL: Speculation. A taxpayer would know?

4 Who knows what taxpayers know, your Honor?

5 THE COURT: Well, to the extent he has expertise, I'll
6 let him answer that.

7 A. I believe some taxpayers would know. Others would not.

8 Q. Mr. Kendall asked you some questions about making a
9 payment to Mr. Singer and being able to deduct that as a
02:28 10 charitable donation. Do you recall those questions?

11 A. Somewhat.

12 Q. Is there a difference between sending funds to a private
13 entity or a private person compared to sending funds to a
14 501(c)(3) charity?

15 A. Yes.

16 Q. Are you -- in your experience, your 40 years of
17 experience, have you ever had a client who tried to take a
18 charitable deduction for a payment to an individual?

19 A. Not that I recall.

02:28 20 MS. KEARNEY: Miss Lewis, can we pull up Exhibit 134
21 again. And if we can go to I think it's around 97. We can
22 actually go a few more pages down, please. Keep going. Keep
23 going. Right here.

24 And Miss Lewis, can you blow up the bottom where it
25 says "Make checks payable to".

1 Q. Mr. Nahmens, do you see here that checks made to the
2 Society for the Preservation of Greek Housing were considered
3 tax-deductible, whereas payments to the Theta Xi Association of
4 Troy, New York are non tax-deductible?

5 A. I see that.

6 Q. Is it your understanding that the difference there is one
7 of those payments would be made to a 501(c)(3), whereas the
8 other would be made to a private entity?

9 A. I would assume the one that says tax deductible is to a
02:29 10 501(c)(3). I don't know about the other one.

11 MS. KEARNEY: Miss Lewis, if we can go two pages above
12 that. Excuse me, three pages above that.

13 Q. You see here, Mr. Nahmens, there was a thank you letter
14 received from the Society for the Preservation of Greek
15 Housing?

16 A. Yes.

17 Q. And this letter includes that language you were talking
18 about earlier that no goods or services were provided in return
19 for the gift?

02:30 20 A. Correct.

21 MS. KEARNEY: And Miss Lewis, if you'd go to the next
22 page.

23 Q. There is a separate thank you letter for that same
24 donation and here there's actually an indication the foundation
25 will provide an acknowledgment for tax receipt purposes?

1 A. I see that.

2 Q. And is it your experience that entities that receive
3 donations often send a thank you letter and sometimes a
4 separate gift receipt for tax purposes?

5 A. That does happen.

6 MS. KEARNY: And if we can go, Miss Lewis, a few pages
7 down to the letter from The Geier Group that Mr. Kendall showed
8 you.

9 Q. Do you recall looking at this, Mr. Nahmens?

02:31 10 A. I'm sorry. What?

11 Q. Do you recall looking at this letter with Mr. Kendall?

12 A. Yes.

13 Q. And this appears to be a thank you letter. It does not
14 include that language about whether goods or services were
15 exchanged. Do you see that?

16 A. Yes.

17 Q. So it does not include that language, correct?

18 A. Correct.

19 MS. KEARNEY: And Miss Lewis, if we go up one page.
02:31 20 If we can make sure we get the bottom of the letter, please,
21 Miss Lewis.

22 Q. Do you see that this letter also concerns that same
23 donation, but includes the tax receipt language that no goods
24 or services were exchanged, correct?

25 A. Yes.

1 Q. Mr. Kendall asked you some questions about a potential
2 reimbursement arrangement for Hyannis Port Capital's office
3 space?

4 A. Yes.

5 Q. And you don't prepare Mr. Kendall's -- excuse me --
6 Mr. Wilson's personal tax returns, correct?

7 A. That's correct.

8 Q. And you don't know what his personal tax advisers advised
9 him with respect to any deduction for the office space,
02:32 10 correct?

11 A. There was a discussion at one time about it, but it had
12 been for prior years.

13 MS. KEARNEY: Miss Lewis, can you pull up Exhibit 710,
14 which is in evidence.

15 Q. Mr. Nahmens, I understand you're not on this e-mail. Do
16 you see in the bottom e-mail from John Wilson, he writes,
17 "Rick, thanks again for making this happen! Please give me the
18 invoice. What are the options for the payment? Can we make it
19 for consulting or whatever from the Key, so that I can pay it
02:33 20 from the corporate account?"

21 Do you see that?

22 A. Yes. I see that.

23 Q. And if you look at the e-mail above, there's a response
24 from Rick Singer. He says, "Yes. We can send you an invoice
25 for business consulting fees and you may write-off as an

1 expense. What is the name, address, et cetera that you want
2 the invoice to be made out to?"

3 Do you see that?

4 A. Yes.

5 Q. And Mr. Wilson responds, "R awesome!" And then he
6 provides the name and address for Hyannis Port Capital. Do you
7 see that, Mr. Nahmens?

8 A. Yes.

9 Q. Does this e-mail look like a charitable contribution being
02:34 10 discussed?

11 MR. KENDALL: Objection, your Honor.

12 THE COURT: Sustained.

13 Q. Mr. Nahmens, had you seen this e-mail in preparing the
14 2014 tax returns, would you have asked questions about those
15 payments?

16 A. Give me a moment to read it again.

17 Honestly, it's tough to say what I would have done
18 under those circumstances. I would have to give that some
19 further thought.

02:35 20 Q. Mr. Nahmens, I just want to point one other thing out on
21 this document. Do you see the subject line there?

22 A. I do.

23 Q. It says "USC fees". Do you see that?

24 A. Yes.

25 Q. And Mr. Kendall asked you a number of questions about

1 using the word "payment", but in your experience do you refer
2 to donations as "fees"?

3 MR. KENDALL: Objection, your Honor.

4 THE COURT: Overruled.

5 A. I do not.

6 Q. And Mr. Nahmens, can a taxpayer deduct a payment to his
7 son's college counselor as a business expense?

8 A. No.

9 MS. KEARNEY: Thank you.

02:35 10 THE COURT: Recross, Mr. Kendall.

11 MR. KENDALL: Yes, your Honor.

12 RECROSS-EXAMINATION OF JAMES NAHMENS

13 BY MR. KENDALL:

14 Q. I just want to go through a few things. If Debbie is
15 transferring amounts of, let's say, \$100,000 or more out of the
16 HPC, proper accounting or proper bookkeeping would be to have
17 some type of invoice for the amount, correct? You just don't
18 send a \$100,000 bank transfer without an invoice, correct?

19 A. Correct. Assuming it's for an expenditure, yes.

02:36 20 Q. Okay. And if Mr. Singer is saying, I'm going to be the
21 delivery boy for the \$100,000 donation to USC, send me the
22 \$100,000, I'll buy the bank check and I'll drop it off to them,
23 the charitable thank you is going to come sometime after that
24 \$100,000 is transferred out of HPC, correct?

25 A. An acknowledgment would follow a payment.

1 Q. And you -- the document that Miss Kearney just showed you
2 is Mr. Wilson saying, consulting or whatever, correct?

3 A. That's what that document said.

4 Q. He's indifferent, consulting or whatever. He needs a
5 receipt for Debbie to make the transfer, correct?

6 MS. KEARNEY: Objection, your Honor, as to what
7 Mr. Wilson.

8 THE COURT: Sustained.

9 Q. The language he uses is "consulting or whatever", correct?

02:37 10 A. That's what was on that e-mail.

11 Q. And it gives an invoice just so Debbie knows where to send
12 the \$100,000, correct?

13 A. Was it \$100,000 or?

14 Q. It was \$100,000 even.

15 A. Okay.

16 Q. And then, a few months later, USC sends a thank you note
17 for the donation, correct? That was the letter I showed you.
18 It came in July.

19 A. You did show that to me.

02:38 20 Q. And then, if you, yourself, checked the IRS website to
21 make sure that The Key Foundation was a recognized certified
22 charity, correct?

23 A. I did.

24 Q. And if the head of an IRS approved and certified charity
25 says, can you make another \$20,000 contribution to cover the

1 expenses of the foundation, that, too, can be a charitable
2 donation, correct?

3 MS. KEARNEY: Objection, your Honor. It's assuming
4 facts not in evidence.

5 THE COURT: Sustained.

6 Q. A \$20,000 donation to cover the expenses of an IRS
7 approved charity is also a donation, correct?

8 A. Assuming it makes -- it meets IRS standards.

9 Q. And if you do it as a cash contribution, or as a noncash
02:39 10 contribution, they're both tax deductible, correct?

11 A. Yes.

12 Q. And a cash contribution would be to, say, to the charity,
13 here's \$20,000, I'm donating it to the charity. That's a cash
14 contribution, correct?

15 A. Right.

16 Q. And if you also go to the head of the foundation and say,
17 here's \$20,000 to cover the expenses, I assume you'll take care
18 of it to pay the bookkeeper, to pay whatever, that could be a
19 non-cash contribution, correct?

02:39 20 MS. KEARNEY: Objection. Misstates the evidence.

21 THE COURT: Sustained.

22 Q. A \$20,000 payment to the head of a foundation to buy
23 resources, you know, personnel, supplies, whatever, for the
24 expenses of the foundation can be a non-cash contribution,
25 correct?

1 A. A payment to the head of the organization, or a payment to
2 the organization?

3 Q. If you give the head of the organization \$20,000 to go out
4 and buy the -- to go out and buy the resources for the place.
5 We don't have a car. We don't have paper. We don't have
6 computers. I'll pay for the computers for the foundation.
7 Here's the cash. Go get them.

8 MS. KEARNEY: Objection.

9 Q. That's a non-cash contribution?

02:40 10 THE COURT: If he understands it as an expert in that
11 area, I'll allow him to answer.

12 Q. That's a non-cash contribution, correct?

13 A. You're saying a payment to the head of an organization?

14 Q. No. Let me correct it. If the person says, I will pay
15 for the computers of the organization, I'll pay for the
16 secretarial help, here is the money, you can go buy them with
17 my money and it's my contribution to the organization, I'm
18 paying for the expenses of the organization, can that be a
19 contribution?

02:40 20 A. By making a charitable contribution to the organization.

21 Q. Yes. Fair enough.

22 And all the documents you had about the \$20,000 to
23 Mr. Singer and requiring tax stuff, that was all e-mails for
24 Debbie Rogers. It wasn't with John Wilson, correct?

25 A. That's correct.

1 Q. The last issue. There's -- I want to clarify the home
2 office issue that Miss Kearney just raised with you. There was
3 an issue -- there is an issue common that people want to deduct
4 a part of their expenses for their personal home as a home
5 office deduction. You're familiar with that concept?

6 A. Yes.

7 Q. Okay. There was a separate and distinct issue that Debbie
8 Rogers had her office in a house that was only being used for
9 the HPC office, because the Wilson family had gone to Europe,
02:41 10 correct?

11 A. I'm not aware of how the house was being used. I only saw
12 the office.

13 Q. You saw the office and you know John and his wife and his
14 daughters were in Europe?

15 A. Yes.

16 Q. So if they're paying rent on this house and the only
17 person using it is Debbie using it for an office, that's not a
18 home office deduction. That's just a rental expense.

19 MS. KEARNEY: Objection.

02:42 20 THE COURT: Sustained.

21 Q. Do you understand the difference of what I'm trying to
22 point out? Let me rephrase that.

23 Didn't John raise with you whether or not he could
24 take part of the rent expense for the house and just have it as
25 an office expense, not a home office expense, just an office

1 expense, and then he never followed up on it?

2 A. Debbie raised it with me by forwarding an e-mail from
3 John.

4 Q. And then John just never followed up on it, correct?

5 A. I was not aware of any follow-up on that.

6 MR. KENDALL: Thank you very much. No further
7 questions.

8 MR. KELLY: Still nothing, your Honor.

9 THE COURT: All right. Thank you, Mr. Nahmens. You
02:43 10 may step down.

11 THE WITNESS: Thank you, your Honor.

12 THE COURT: Miss Kearney?

13 MS. KEARNEY: The government calls Jeff DeMaio.

14 THE CLERK: Thank you. You may be seated. Would you
15 please state your name for the record, spelling your last. You
16 can take that off.

17 THE WITNESS: Jeffrey DeMaio, D-e-m-a-i-o.

18 MS. KEARNEY: May I proceed?

19 THE COURT: Miss Kearney, you may.

02:44 20 DIRECT EXAMINATION OF JEFFREY DEMAIO

21 BY MS. KEARNEY:

22 Q. Good afternoon, Mr. DeMaio.

23 A. Good afternoon.

24 Q. Where do you live?

25 A. Irvine, California.

1 Q. Are you currently employed?

2 A. Yes, ma'am.

3 Q. Where?

4 A. The AYCO Company, AYCO Financial Planning Division,
5 Goldman Sachs.

6 Q. What is AYCO? What does it do?

7 A. Personal financial management.

8 Q. What do you do at AYCO?

9 A. I'm a financial planner.

02:44 10 Q. What does that involve?

11 A. Working with mostly individuals in the areas of tax and
12 investment planning, retirement planning, benefits and
13 compensation planning, mortgage planning, debt management,
14 things of that nature.

15 Q. How long have you been a financial planner?

16 A. 28 years.

17 Q. What's your educational background?

18 A. I have a Bachelor of Science in finance and an MBA in
19 finance.

02:45 20 Q. In the course of your career, have you been involved in
21 the preparation of tax returns?

22 A. I have.

23 Q. What role have you played in the preparation of tax
24 returns?

25 A. Various roles over the course of my career, whether it's

1 gathering data and helping prepare the tax return, reviewing
2 tax returns, of course signing tax returns.

3 Q. Approximately, how many returns have you been involved in
4 preparing over the course of your career?

5 A. In one form or another, probably 4 or 5,000.

6 Q. What kind of returns have you prepared?

7 A. Mostly personal returns. Sometimes I'll get involved in a
8 trust income tax return, or a partnership return, sometimes a
9 gift tax return, estate tax return.

02:46 10 Q. I'm going to ask you some questions about John Wilson. Do
11 you know him?

12 A. Yes.

13 Q. How do you know him?

14 A. He's a former client.

15 Q. When did Mr. Wilson become a client?

16 A. Approximately January of 1999, I believe.

17 Q. What work did you do for him?

18 A. Tax work and financial planning work over the course of
19 our relationship.

02:46 20 Q. Did that involve preparing his personal tax returns?

21 A. Yes, ma'am.

22 Q. For how many years did you prepare Mr. Wilson's tax
23 returns?

24 A. Our entire relationship.

25 Q. So nearly 20 years approximately?

1 A. Yes.

2 Q. I want to ask you some questions now about Rick Singer.

3 Do you know Rick Singer?

4 A. I do.

5 Q. How do you know him?

6 A. I was introduced to Rick Singer by an HR professional
7 in -- around 2006 or '07 at a lunch meeting, I believe.

8 Q. Did there come a time when you recommended Mr. Singer to
9 some of your clients?

02:46 10 A. Yes.

11 Q. How many of your clients did you refer to Mr. Singer?

12 A. I'd say four or five over the course of about 10 years.

13 Q. Why did you refer clients to Mr. Singer?

14 A. If it came up in a meeting that a client was inquiring
15 about if I knew of anybody that did ACT prep and tutoring and
16 things of that nature, a person that might be pursuing college,
17 did I know anybody. That was really the only name I knew of at
18 the time.

19 Q. Are you aware whether any of the clients to whom you
02:47 20 referred Mr. Singer ever used his services?

21 A. The only one I'm aware of is John.

22 Q. And when did you recommend Mr. Singer to Mr. Wilson?

23 A. Right around 2010, around three years after I had been
24 introduced to him.

25 Q. What did you discuss with Mr. Wilson about Mr. Singer?

1 A. It was a fairly limited conversation. I just vaguely
2 recall that one of his children were going to be preparing for
3 college soon and that they were looking at ACT prep and
4 tutoring services and things of that nature, so Rick came to my
5 mind from the earlier introduction.

6 Q. What did you know about Mr. Singer at the time you gave
7 his name to Mr. Wilson?

8 A. I knew that he worked with clients up and down the western
9 United States. He definitely had significant tutoring staff.
02:48 10 The person who introduced us mentioned that we had a number of
11 mutual clients because of his role. He knew of the clients
12 that Rick worked with and he knew the clients that I worked
13 with. He didn't get into specifics, but he mentioned that we
14 had some mutual clients and that he had heard that Rick had
15 done good work.

16 Q. Did you discuss with Mr. Wilson that you had referred
17 Mr. Singer to any of your other clients?

18 A. I believe in the e-mail I sent back to John when he had
19 requested his contact information, I mentioned that we had some
02:48 20 mutual clients.

21 Q. Did there come a time when you hired Mr. Singer yourself?

22 A. I did. Approximately --

23 Q. When was that?

24 A. I did, yes.

25 Q. When was that?

1 A. Around 2015, about 5 years after I introduced him to John.

2 Q. And what did you hire Mr. Singer for?

3 A. Tutoring services, ACT prep type services for around six
4 or seven months trying out the services. We were looking for
5 some tutors and I recall that he had a pretty good tutoring
6 staff, or at least had a number of them, and we tried his
7 services for about six or seven months, and then discontinued
8 it after that.

9 Q. How old were your children at the time you used

02:49 10 Mr. Singer's services?

11 A. They were starting their freshman year.

12 Q. What did you pay for Mr. Singer's services?

13 A. It worked out to about 6 or \$700 a month per student.

14 Q. And I want to back up a second. When you said "freshman
15 year," freshman year of high school?

16 A. Yes.

17 Q. Did you use Mr. Singer for any other services?

18 A. No.

19 Q. Why not?

02:49 20 A. We just -- at the time, there wasn't real good chemistry
21 between him and my kids and my wife. We were still exploring
22 different resources and perhaps maybe started a little early
23 with them and decided to go in a different direction.

24 Q. I want to turn now to the preparation of Mr. Wilson's tax
25 returns. Did you and your team have a regular set of steps

1 that you followed in preparing Mr. Wilson's returns?

2 A. Yes.

3 Q. Typically, what was that process?

4 A. Our process involved sending out a tax data collection
5 package, which involves a number of checklists and reminder
6 notices and instructions to pull together your tax data. And
7 it also included an organizer reflecting a number of data
8 points from the prior year to help remind the client of things
9 to pull together, different envelopes, things of that nature.

02:50 10 Q. What did you do after you collected all of the materials
11 you needed?

12 A. If there was sufficient data to begin work on the return,
13 we'd complete a draft of the returns, and then we would compile
14 a list of open items or questions. There would usually be a
15 number of people involved in the preparation of the return, for
16 example, a tax preparer, a reviewer from our CPA staff, myself,
17 perhaps another member of the team to work on it as a team.
18 Between all of us, we had a list of items that were missing and
19 we approached the client in order, or the client's
02:51 20 representatives, for the missing information.

21 Q. And who did you contact if you had a question about
22 missing information?

23 A. Often -- for John, we had contacted his assistant Debbie
24 Rogers.

25 Q. What about if a substantive question came up? Who did you

1 contact?

2 A. Often, we would suggest a conference call with John
3 through Debbie. That might be one course.

4 Q. And what happened once Mr. Wilson's return was prepared
5 and you had all your questions answered? What happened next?

6 A. We had all of the missing items or items we thought were
7 missing. We then would finalize the tax return. We would
8 collate it, contact the client or Debbie perhaps in this
9 situation for John, and we would confirm where to send the data
02:52 10 -- or excuse me -- the tax return for review and filing
11 purposes.

12 Q. And did there come a time when Mr. Wilson asked you
13 questions about a return after you sent it to him?

14 A. Over the course of our relationship?

15 Q. Yes.

16 A. Of course.

17 Q. How often did that happen?

18 A. Periodically. I'd say at least once on average per tax
19 year.

02:52 20 Q. What kinds -- excuse me. Did you have more to say?

21 A. We would also discuss questions during the course of the
22 year, perhaps if we were doing quarterly tax preparing, as
23 well. But I think you're focussing on just on the tax
24 preparation process.

25 Q. Well, let me ask you this. What kind of questions did you

1 discuss with Mr. Wilson?

2 A. Well, after the return was completed?

3 Q. Let's start with that, after the return was completed.
4 What kind of questions did you ask?

5 A. Usually, we would be answering questions that -- at that
6 point in time, that the client might have, or John would have.
7 So, for example, how did a return turn out compared to your tax
8 projection, or if I have a refund, why aren't you applying it
9 and how much, what's the rationale behind that, what's the
02:53 10 strategy, things like that.

11 Q. What about during the course of the year? What kinds of
12 questions did you discuss with Mr. Wilson?

13 A. If there's any income or deduction changes that we should
14 be aware of just to take into account while we're working on
15 estimated payment planning, the tax projection that we try to
16 update on a quarterly basis.

17 MS. KEARNEY: Miss Lewis, can we pull up Exhibits 170
18 and 172 for the witness only?

19 Q. Mr. DeMaio, these are also in the binder in front of you,
02:53 20 if it's easier to look at them in hard copy.

21 Mr. DeMaio, do you recognize the documents up on the
22 screen, Exhibits 170 and 172?

23 A. I do.

24 Q. What are they? Let's start with 170. What is that?

25 A. That is a draft cover letter of a tax package that we

1 would send out to a client when the return was finalized.

2 Q. And what do you recognize the document on the right to be?

3 A. That is the final cover letter of a tax return that's
4 going to be sent out to the client.

5 Q. And what year are these both dated?

6 A. 2015.

7 MS. KEARNEY: The government offers Exhibits 170 and
8 172.

9 THE COURT: It will be admitted.

02:54 10 (Exhibit 170, 172 admitted into evidence.)

11 Q. So Mr. DeMaio, starting with Exhibit 170, dated
12 November 25, 2015, to whom was this document addressed?

13 A. John and Leslie Wilson.

14 Q. And at what address?

15 A. 2 Fleur Place, Atherton, California, 94027.

16 MS. KEARNEY: And Miss Lewis, if we can zoom out.

17 Q. It doesn't appear that this letter was printed on any kind
18 of letterhead, correct?

19 A. Correct.

02:55 20 MS. KEARNEY: Can we go to page 3 of this document,
21 Miss Lewis.

22 Q. These appear to be instructions for filing a Form 1040.
23 What is a Form 1040?

24 A. Personal income tax return.

25 MS. KEARNEY: And Miss Lewis, can we pull up the last

1 paragraph of the instructions.

2 Q. This paragraph states, "These returns were prepared from
3 information provided by you or your representative. The
4 preparation of tax returns does not include the independent
5 verification of information used. Therefore, we recommend you
6 review the returns before filing to ensure there are no
7 omissions or misstatements. If you note anything which may
8 require a change to the returns, please contact us before
9 filing them".

02:56 10 What did you mean by that?

11 A. These are our filing instructions, and this is where we
12 are advising a client that we're depending on the data that
13 they provided to us, but we're not auditing their data and
14 we're relying on it to prepare an accurate return.

15 Q. And did you send these instructions to Mr. Wilson?

16 A. Yes.

17 MS. KEARNEY: Miss Lewis, can we go to page 22.

18 Q. Is the remainder of this document the 1040 and
19 accompanying schedules and statements?

02:56 20 A. I only see the first page, but --

21 Q. It's also in the binder in front of you, if that's easier,
22 at tab 170.

23 A. Thank you. Would you scroll down, please. Yes.

24 Q. And you'll see there's some redactions on this exhibit.
25 The government has redacted any social security numbers or bank

1 account numbers.

2 MS. KEARNEY: Can we go to Exhibit 172, please,
3 Miss Lewis.

4 Q. This is a cover letter dated December 4, 2015. To whom is
5 it addressed?

6 A. John Wilson.

7 Q. At what address?

8 A. 1101BE Amsterdam, The Netherlands.

9 MS. KEARNEY: And Miss Lewis, if we can zoom out for a
02:58 10 moment.

11 Q. This appears to be on AYCO letterhead and there's a
12 signature on the page. Do you see that?

13 A. Yes.

14 Q. Whose signature is that?

15 A. That's mine.

16 Q. Why -- was this mailed to Mr. Wilson?

17 A. Yes.

18 Q. Why was it mailed to him in The Netherlands?

19 A. Because after we finalized the tax return on the 25th, we
02:58 20 contacted John's assistant. I think it might have been a
21 weekend or some vacation time in between there and we confirmed
22 where the return should be sent. So instead of Atherton, John
23 was working in the Netherlands, and we were directed to send it
24 to the Netherlands.

25 Q. And Mr. DeMaio, I'll ask you to just slow down a little

1 bit so we don't give the court reporter a headache.

2 A. Okay. Sorry.

3 MS. KEARNERY: If we can look at page 4 of this
4 document, Miss Lewis.

5 Q. This appears to be an excerpt of the tax return for
6 Mr. Wilson, is that correct?

7 A. Yes.

8 Q. And in the bottom, there's a signature?

9 A. Yes.

02:59 10 Q. Whose signature is that?

11 A. That is mine.

12 Q. And the Wilson's signatures were not yet on this tax
13 return?

14 A. Correct.

15 MS. KEARNEY: Can we look at what's already in
16 evidence as Exhibit 174A, please, Miss Lewis.

17 Q. Mr. DeMaio, this is a certified copy of the Form 1040
18 individual -- U.S. individual tax return for John and Leslie
19 Wilson for tax year 2014, which has already been admitted into
02:59 20 evidence. And again, the government has redacted social
21 security numbers and bank account information from this return.

22 MS. KEARNEY: Can we look at page 2, Miss Lewis, and
23 highlight the top, please.

24 Q. Who are the taxpayers identified at the top of the page?

25 A. John and Leslie Wilson.

1 MS. KEARNEY: If we can look at page three, please,
2 Miss Lewis, and highlight the bottom.

3 Q. Is this the same signature we saw previously in the copy
4 from AYCO's files that has your signature in the "preparer's
5 use only" section?

6 A. Yes. That's my signature.

7 Q. And it now bears the signatures of John and Leslie Wilson
8 as well?

9 A. Are you asking me?

03:00 10 Q. Yes.

11 A. Yes.

12 Q. And right above John Wilson's signature, it reads, "Under
13 penalties of perjury, I declare that I have examined this
14 return and accompanying schedules and statements, and to the
15 best of my knowledge and belief, they are true, correct, and
16 complete". And then, again, whose signatures appear underneath
17 that?

18 A. John and Leslie Wilson's and mine.

19 MS. KEARNEY: Miss Lewis, can we jump to page 93,
03:00 20 please.

21 Q. Mr. DeMaio, is this a copy of the instructions that we
22 just looked at in the previous exhibit, which was from AYCO's
23 files?

24 A. Can you scroll down, please? Yes.

25 Q. It appears the Wilson's actually filed the instructions

1 with their return as well, correct?

2 A. It appears that way, yes.

3 Q. So going back to page 2, in the middle of the page there's
4 a section titled "Income". Just at a high level, can you
5 explain what information is reported in the Income section in
6 an individual tax return?

7 A. Yes. This section makes up the clients' earned income,
8 interest, dividends, business income, capital gains and losses,
9 miscellaneous income, and pass through income from other
03:02 10 entities, such as an investment they might be in, or a business
11 that they operate.

12 Q. And I want to direct your attention to line 17, which
13 reads "rental real estate, royalties, partnerships, S
14 corporations, trusts, et cetera. Attach Schedule E". And
15 there's an amount of negative \$495,129. Are you familiar with
16 whether Mr. Wilson was a shareholder in any S corporations?

17 A. Yes.

18 Q. And line 17 says "attached Schedule E".

19 MS. KEARNEY: I'd like to turn to page 18, please,
03:02 20 Miss Lewis.

21 Q. Mr. DeMaio, what is at page 18?

22 A. This is the first page of Schedule E.

23 Q. And if we can go to the next page of the Schedule E at
24 Part II. This section is entitled "income or loss from
25 partnerships and S corporations" and there are entries for

1 Hyannis Port Capital and 2G Digital Post. And then if you go
2 down to line 32, it reports total S corporation losses of
3 negative \$495,129. What is the source for this number?

4 A. That number right there is the total of the two losses
5 reported above from those two businesses.

6 Q. And where does that information come from?

7 A. That information comes from a form called a K-1 form,
8 which summarizes the gains and losses of that other -- of those
9 two other entities, those entities' tax returns.

03:03 10 Q. So you would have looked at the K-1s from Hyannis Port
11 Capital and 2G Digital Post in order to pull that information
12 out of the K-1 and put it into Mr. Wilson's personal tax
13 return?

14 A. Yes.

15 MS. KEARNEY: Can we go to page 64, please,
16 Miss Lewis?

17 Q. And this is a supplement to Schedule E. And do you see
18 that there is a K-1 named Hyannis Port Capital and then a
19 second one for 2G Digital Post?

03:04 20 A. Yes.

21 Q. And what is the amount recorded under "ordinary loss" from
22 Hyannis Port -- "ordinary income or loss" from Hyannis Port
23 Capital?

24 A. Negative 383,987.

25 MS. KEARNEY: Miss Lewis, if we can keep this up on

1 the right and go back to page 2 on line 17 on the left.

2 Q. Mr. DeMaio, is the \$383,987 of business loss from Hyannis
3 Port Capital included in the negative \$495,129 number in
4 line 17?

5 A. Yes.

6 Q. And how does having a loss of negative \$495,129 affect the
7 total income calculation for the Wilsons for 2014?

8 A. It reduces the total adjusted gross.

9 Q. And how does reducing the total adjusted gross income
03:05 10 affect the amount of taxes that they would owe?

11 A. It reduces the taxable income and, therefore, reduces the
12 taxes.

13 MS. KEARNEY: Miss Lewis, we can take the pages on the
14 right down and go to page 3 of the Exhibit 174A. Excuse me,
15 page 4. Sorry. You were right the first time. And can we
16 look at line 40, please.

17 Q. Mr. DeMaio, line 40 reads "itemized deductions (from
18 Schedule A)" and lists an amount of \$489,952. First, just
19 generally, what are itemized deductions?

03:06 20 A. Itemized deductions are the various sources of deductible
21 items that reduce your income, which are compiled on Schedule

22 A. They're comprised of things like mortgage interest,
23 investment interest expense, charitable contributions, real
24 estate taxes paid, miscellaneous deductions.

25 Q. And let's look at page 4 of the Schedule A, and

1 specifically the "Gifts to Charity" section. Lines 16 through
2 19 report gifts to charity of \$220,215. How does making
3 \$220,215 in gifts to charity affect the Wilson's itemized
4 deduction calculation?

5 A. It increases the itemized deductions.

6 Q. And how does that affect the amount of taxes that they
7 would owe?

8 A. It would reduce the taxable income and, therefore, reduce
9 the amount of state and federal income taxes.

03:07 10 MS. KEARNEY: If we can keep this page up on the left,
11 Miss Lewis, and look at page 56 of this exhibit on the right.
12 If you can blow up "Cash Contributions". Thank you.

13 Q. So on the right is the supplemented Schedule A, which
14 lists cash contributions, and below that it says "partnership/S
15 corporation/estate and trust", and the first entity listed is
16 Hyannis Port Capital, \$195,000. What does that indicate?

17 A. That indicates a charitable contribution that passed
18 through on the K-1 form I was referring to earlier from that
19 particular business entity.

03:08 20 Q. And below that are other cash contributions. What are
21 those?

22 A. Those are cash contributions that John and Leslie would
23 have paid -- or made personally and reported on Schedule A.

24 Q. And combined, the donations from the two S corporations
25 and the personal donations total \$220,215?

1 A. Correct.

2 Q. And how does that correspond to the gifts to charity in
3 Schedule A on the left?

4 A. That number carried over to line 19 on Schedule A.

5 MS. KEARNEY: Thank you, Miss Lewis. We can take that
6 down.

7 Q. Mr. DeMaio, did Mr. Wilson amend his personal tax return
8 for 2014?

9 A. Yes.

03:09 10 MS. KEARNEY: Can we look at Exhibit 235, please, just
11 for the witness.

12 Q. Do you recognize this document, Mr. DeMaio?

13 A. Yes.

14 Q. What is it?

15 A. This is the cover page for a set of amended tax returns.

16 MS. KEARNEY: The government offers Exhibit 235.

17 THE COURT: It will be admitted.

18 (Exhibit 235 admitted into evidence.)

19 Q. And to whom was this cover letter addressed?

03:09 20 A. John and Leslie Wilson.

21 Q. At what address?

22 A. 155 Irving Avenue, Hyannis Port, Massachusetts 02647.

23 MS. KEARNEY: If we go to page 8, please, Miss Lewis.

24 Q. These are the instructions for filing Form 1040-X. What
25 is a 1040-X?

1 A. That's an amended personal federal income tax return.

2 Q. And the last paragraph of these instructions, is that
3 consistent with the instructions we already looked at?

4 A. Yes.

5 MS. KEARNEY: If we can go to page 9, please,
6 Miss Lewis, and highlight the middle of the page.

7 Q. Mr. DeMaio, what changes were made between the original
8 2014 return and this amended return?

9 A. No financial changes.

03:10 10 MS. KEARNEY: If we can go to the next page,
11 Miss Lewis, and highlight part 3.

12 Q. Mr. DeMaio, why was this amended return filed if there
13 were no financial changes to it?

14 A. The returns were filed to file what's called a protective
15 claim, which basically just allows the taxpayer to make a
16 future amendment to the tax return if there was like a tax law
17 change or some other occurrence that would merit such.

18 MS. KEARNEY: Thank you.

19 Miss Lewis --

03:11 20 Q. Let me back up. Mr. DeMaio, did Mr. Wilson amend his 2014
21 returns a second time?

22 A. Yes.

23 MS. KEARNEY: And can we pull up, for the witness
24 only, Exhibit 482.

25 Q. Do you recognize this document?

1 A. Yes.

2 Q. What is it?

3 A. This is the filing instructions for the amended tax return
4 for 2014.

5 MS. KEARNEY: The government offers Exhibit 482.

6 THE COURT: It will be admitted.

7 (Exhibit 482 admitted into evidence.)

8 Q. And at the bottom of this first page, Mr. DeMaio, has been
9 digitally signed by John O'Neil. Who is John O'Neil?

03:11 10 A. He's one of the CPAs in our tax department.

11 Q. And when did he sign this?

12 A. March 21, 2018.

13 Q. If we look at the last paragraph on this page, are these
14 instructions consistent with the instructions we've looked at
15 already today?

16 A. Yes.

17 MS. KEARNEY: If we could go to page 2, please,
18 Miss Lewis, and highlight the middle of the page.

19 Q. Were there changes between the prior returns that we've
03:12 20 looked at and this second amended return?

21 A. Yes.

22 MS. KEARNEY: Can we go to page 3, please, Miss Lewis,
23 and highlight Part III.

24 Q. Why were changes made in this second amended return?

25 A. John's employer issued a corrected form W-2 regarding his

1 wages or earned income.

2 MS. KEARNEY: And Miss Lewis, can we pull up
3 Exhibit 174A, the original tax return, on the left and then
4 this amended return, Exhibit 482, on the right. And can we go
5 to the "Income" section on the filed original return. And if
6 we go to page 5, I believe, of the second amended return.

7 Q. Mr. DeMaio, were there any changes made in the business
8 losses reported on line 17 between the original return and the
9 second amended return?

03:13 10 A. No.

11 Q. If we can look at page 4 of the original return on the
12 left and look at the "Gifts to Charity", and then page 7 of the
13 second amended return "Gifts to Charity". Mr. DeMaio, were
14 there any changes made in the gifts to charity reported between
15 the original tax return and the second amended return?

16 A. No.

17 MS. KEARNEY: Thank you, Miss Lewis. We can take
18 those down.

19 Q. Mr. DeMaio, during the decade of so you that provided --
03:14 20 or excuse me -- two decades that you provided tax planning
21 services to Mr. Wilson, how often did you communicate with him?

22 A. It would vary year to year, quarter to quarter, but four
23 to five times a year I would estimate.

24 Q. How did you typically communicate with him?

25 A. Telephone conference and e-mail.

1 Q. Did Mr. Wilson have a familiarity with taxes when you
2 spoke with him?

3 MR. KENDALL: Objection, your Honor.

4 THE COURT: He can answer that question, familiarity.

5 A. Similar to many clients.

6 THE REPORTER: Could you say that again?

7 THE WITNESS: Similar to most clients.

8 Q. How would you describe Mr. Wilson's level of business
9 sophistication?

03:15 10 A. I thought John was very sophisticated, very sharp.

11 MS. KEARNEY: If we look at Exhibit 667, just for the
12 witness, please.

13 Q. Mr. DeMaio, do you recognize this exhibit?

14 A. Yes.

15 Q. What is it?

16 A. This is a text message.

17 Q. Between who?

18 A. John and myself.

19 Q. What's the date?

03:15 20 A. October 20th.

21 MS. KEARNEY: The government offers Exhibit 667.

22 THE COURT: October 20th of?

23 Q. Do you recall the year?

24 A. 2018.

25 THE COURT: It will be admitted.

1 MR. KEARNY: Can we show it to the jury?

2 (Exhibit 667 admitted into evidence.)

3 Q. Mr. DeMaio, there's lighter color bubbles on the left and
4 dark colored bubbles on the right. Whose texts are the lighter
5 colored bubbles on the left?

6 A. John's.

7 Q. And whose are the darker colored bubbles on the right?

8 A. Mine.

9 Q. And if we look at the last text on that chain on
03:16 10 October 20th, I think you said of 2018, there's a text from
11 Mr. Wilson that says "Jeff. Is there a limit on tax deductions
12 for charity contributions?"

13 What did you understand Mr. Wilson to be asking you?

14 A. It was a generic question, basically. If you gave or
15 donated money to charity, could the deduction be limited by
16 things such as your level of income, or other factors.

17 MS. KEARNEY: Could we look at Exhibit 669, for the
18 witness only, please.

19 Q. Do you recognize Exhibit 669?

03:17 20 A. Yes. It's an e-mail exchange.

21 Q. From whom?

22 A. Debbie Rogers.

23 Q. To whom?

24 A. Myself and John Wilson.

25 Q. What's the date?

1 A. October 22, 2018.

2 Q. So two days after the text message we just looked at?

3 A. Yes. Or four days, right? Four days.

4 Q. Do you need to see the date of the text message again?

5 A. Yeah. I apologize. I thought it was the 18th. Maybe it
6 was 2018. My apologies. It was October 20th. My apologies.
7 You're right. I stand corrected.

8 MS. KEARNEY: If we can go back to Exhibit 669, the
9 government offers Exhibit 669.

03:17 10 THE COURT: It will be admitted.

11 (Exhibit 669 admitted into evidence.)

12 Q. And if we go to the bottom of page 2, there's an e-mail
13 from you on October 22, 2018, where you wrote "Also, in
14 response to your question about charitable gift limitations,
15 the limits range from 20 percent to 50 percent of your AGI",
16 and Mr. Wilson responded.

17 MS. KEARNEY: If we can look at that, please,
18 Miss Lewis.

19 Q. "Giving half million cash to a 401(c)(3) educational
03:18 20 foundation this year. Possibly more this year and a similar
21 amount next year".

22 What did you understand Mr. Wilson to mean?

23 A. That he was planning some charitable contributions over
24 the course of one to two or more years.

25 Q. And he references a 401(c)(3). Do you understand that to

1 be a typo?

2 A. I thought he might be referring to a 501(c)(3).

3 Q. And if we look up at your response, you ask for the name
4 and tax ID number of the charity. And let's look at -- what
5 did Mr. Wilson reply? What was his reply?

6 A. He says, "Yes. Debbie please follow-up".

7 MS. KEARNEY: Let's look at Exhibit 670 for the
8 witness only, please.

9 Q. Do you recognize this document?

03:19 10 A. Yes. That's an e-mail.

11 Q. From who?

12 A. Debbie Rogers.

13 Q. To whom?

14 A. To myself.

15 Q. And who's copied?

16 A. Debbie Rogers and John Wilson.

17 Q. What's the date?

18 A. October 22, 2018.

19 MS. KEARNEY: The government offers Exhibit 670.

03:19 20 THE COURT: It will be admitted.

21 (Exhibit 670 admitted into evidence.)

22 Q. So on the same day as the e-mail we just looked at,
23 Miss Rogers wrote "Hi Jeff... below is the company and FEIN
24 number in which HPC donated 500 thousand last week and you are
25 going to check to see what category they fall under".

1 What did you understand her to be referring to when
2 she said "HPC"?

3 A. Hyannis Port Capital.

4 Q. And below that is a reference to the Key Worldwide
5 Foundation. Were you familiar with that entity at this time?

6 A. I do not recall that foundation at the time.

7 MS. KEARNEY: Can we look at Exhibit 614, for the
8 witness only, please.

9 Q. Do you recognize this document, Mr. DeMaio?

03:20 10 A. Yes.

11 Q. What is it?

12 A. It's a follow-up e-mail.

13 Q. And who is it from?

14 A. Debbie Rogers.

15 Q. Who is copied on this e-mail?

16 A. Myself, Justin Kessler, one of my team members, Christine
17 Kapp, one of my team members, Debbie Rogers, and John Wilson.

18 Q. What's the date?

19 A. December 11, 2018.

03:21 20 MS. KEARNEY: The government offers Exhibit 614.

21 THE COURT: It will be admitted.

22 (Exhibit 614 admitted into evidence.)

23 Q. At the top of this chain, on December 11, 2018,
24 Miss Rogers references The Key Worldwide Foundation, and she
25 writes "A total of one million in cash donations in 2018. See

1 Jeff's reply from October regarding this donation as well".

2 What reply did you understand her to be referring to?

3 A. So the context of this is my team members were inquiring
4 as to where John's charitable contributions stood for 2018 for
5 fourth quarter tax projection planning purposes.

6 Q. And do you see that -- below that e-mail she has copied an
7 e-mail from you on November 7, 2018?

8 A. Yes.

9 Q. And in that e-mail, you wrote that you and John had
03:22 10 discussed the deductibility of charitable contributions. Who
11 did you mean by "John"?

12 A. John Wilson.

13 Q. What did Mr. Wilson say during that discussion?

14 A. That he was planning some charitable contributions and
15 wanted to know if there would be limitations based on how much
16 he'd donated, and I said that that can vary depending on the
17 type of charitable organization and whether you're donating it
18 in cash or you're donating securities, things like that.

19 Q. And you continue that your company had looked up the name
03:22 20 of the foundation. And it appeared they were a qualified
21 charity in good standing, but that you don't do due diligence
22 on charities. What did you mean by that?

23 A. Well, just to provide some context, I was following up on
24 the earlier e-mail thread that you provided where I had
25 initially responded to John's text explaining that, in that

1 e-mail, I didn't reply via text. I don't think I ever replied
2 to that. There are limitations and it depends on your level of
3 income, and we needed to know more information about the
4 charity to understand if it's a 501(c)(3), public charity, so
5 that we could determine if -- whether the percentage
6 limitations would apply.

7 Q. Why were you adding in a caveat that you don't necessarily
8 do due diligence on charities if your charity group had already
9 looked up the foundation and saw that it was a qualified
03:23 10 charity in good standing?

11 A. Well, because after I had provided that original reply, I
12 explained that we needed to understand at least if the charity
13 was a public charity, and I needed the name and information for
14 the charity to have our charitable services group look it up
15 and see if it was registered with the IRS. And that's when I
16 obtained the information and confirmed that they were a
17 qualified charity with the -- public charity with the Internal
18 Revenue Service. So then when I was providing that answer
19 back, I just wanted to be clear that that was the response or
03:24 20 the inquiry that we were responding to.

21 In the earlier e-mail, Debbie had requested that we
22 look up the category that would fall under, so I was explaining
23 that that was what this reply was pertaining to, that it was --
24 I didn't want it to be construed as us that we had done due
25 diligence on the charity, for example, looking into, you know,

1 their books or their causes, what did they support, things of
2 that nature.

3 Q. You add at the end "If John and Leslie are concerned with
4 that particular organization qualifying as a charity and/or the
5 funds getting donated exactly to and how they wish to the
6 designated charity or school, then another advisable option
7 would be to directly donate".

8 When you say "John and Leslie," who are you referring
9 to?

03:25 10 A. John and Leslie Wilson.

11 MS. KEARNEY: Miss Lewis, can we look at Exhibit 174A
12 again and go to page 2, line 17?

13 Q. Mr. DeMaio, how would the Wilson's tax return have changed
14 if the business expenses reported in line 17 had been reduced
15 by \$120,000?

16 A. Their taxable income would have gone up by \$120,000.

17 Q. And how would that affect the taxes that they owe?

18 A. They would owe additional income tax.

19 MS. KEARNEY: And then if we can go to page 4,
03:25 20 Miss Lewis, and the "Gifts to Charity".

21 Q. How would the Wilson's tax return have changed if the
22 charitable contributions had been reduced by \$120,000?

23 A. Their charitable contributions would have gone down by
24 \$120,000.

25 Q. And how would that have affected their taxes?

1 A. It would reduce their taxable income and their further
2 income taxes for federal and state purposes.

3 Q. Did Mr. Wilson ever discuss these deductions with you, the
4 \$120,000 deductions for business expenses, or a \$100,000
5 charitable deduction?

6 A. On the 2014 return?

7 Q. Yes.

8 A. No, not that I recall anyway.

9 Q. If you had known that, in exchange for the payments that
03:26 10 were reported in those deductions, that the USC water polo
11 coach had agreed to recruit Mr. Wilson's son to the team so he
12 would be admitted to the university as an athletic recruit,
13 would you have done anything differently with Mr. Wilson's tax
14 return?

15 MR. KENDALL: Objection, your Honor.

16 THE COURT: Overruled.

17 Q. Can you repeat the question?

18 A. Sure. If you had known that, in exchange for the payments
19 that were deducted as business expenses and as as charitable
03:26 20 contribution, that the USC water polo coach had agreed to
21 recruit Mr. Wilson's son to the team so that he would be
22 admitted to the university as an athletic recruit, would you
23 have done anything differently with Mr. Wilson's tax return?

24 MR. KENDALL: Objection.

25 THE COURT: Overruled.

1 A. Well, I certainly would have probably done some more
2 inquiries as to what the background of the situation was and
3 had an understanding better before, you know, we could both be
4 comfortable filing the return.

5 Q. Would you have taken a deduction for a business expense in
6 that situation?

7 A. No.

8 Q. Would you have taken a deduction for a charitable
9 contribution in that situation?

03:27 10 A. No.

11 Q. Why not?

12 A. Well, I thought in your example that the coach received
13 the payment. I didn't understand exactly what you meant.
14 Could you repeat it, please.

15 MR. KENDALL: If you could finish, please, your Honor.

16 THE COURT: Go ahead. Finish your answer.

17 A. I was saying that I would probably need to inquire more
18 about the nature of the contribution and draw more attention to
19 understanding it and determining if that was a contribution or
03:28 20 not.

21 Q. When preparing a tax return, do you -- who do you rely on
22 to provide you with the information necessary to determine if a
23 payment should be deducted as a business expense or charitable
24 contribution or some other deduction?

25 A. The taxpayer.

1 MS. KEARNEY: Nothing further.

2 THE COURT: I take it you have more than a few
3 minutes?

4 MR. KENDALL: More than two minutes, your Honor, yes.

5 THE COURT: Okay. We will break for the day.

6 Mr. DeMaio, you may step down for the time being.

7 We'll be in recess until tomorrow morning at 9:00 a.m.

8 Jurors, we'll have a regular day tomorrow, Tuesday. Have a
9 pleasant evening. I'll see you tomorrow morning at 9:00 a.m.

03:28 10 THE CLERK: All rise for the jury.

11 (Jury exits.)

12 THE COURT: Be seated, counsel. You may step down,
13 Mr. DeMaio.

14 Mr. Kendall, approximately how much on cross?

15 MR. KENDALL: Not sure, your Honor. Ballpark an hour
16 plus or minus.

17 THE COURT: All right. And then after Mr. DeMaio, do
18 we have the same order as we were planning before, Mr. Frank?

19 MR. FRANK: Roughly, your Honor. We have Mr. Moon,
03:29 20 Mr. Deckett. I don't believe I mentioned Mr. Deckett on
21 Friday. I neglected to mention him.

22 THE COURT: And how long approximately is Mr. Deckett?

23 MR. FRANK: He's a very short witness of about
24 15 minutes.

25 THE COURT: All right.

1 MR. FRANK: Miss Ranahan and Miss George.

2 THE COURT: Miss George. I have not heard her name
3 before.

4 MR. FRANK: Lauren George, the government's summary
5 witness.

6 THE COURT: Oh. She's the summary witness.

7 MR. FRANK: Yes, your Honor.

8 THE COURT: But we're not going to go back and pick up
9 Mr. Masera?

03:30 10 MR. FRANK: I think that's unlikely, your Honor.

11 THE COURT: All right. And the cross-examinations,
12 approximately what were estimated last week? Is that fair to
13 say? Mr. Kendall? Mr. Kelly?

14 MR. KENDALL: I don't remember exactly what I said,
15 your Honor. Mr. Moon, I expect, will be about 45 minutes, plus
16 or minus a bit, maybe a little more than 45. Miss Ranahan, I
17 don't know how long she's going to go so I don't know how long
18 I'll go. She's the IRS summary witness.

19 THE COURT: All right. And Mr. Deckett and
03:31 20 Miss George.

21 MR. KENDALL: Deckett is being handled by
22 Miss Papenhausen.

23 MS. PAPENHAUSEN: I believe incredibly short, your
24 Honor.

25 THE COURT: And George?

1 MR. KENDALL: I'm not sure exactly, your Honor.

2 Mr. Kelly and I have to discuss how we're dividing that up.

3 THE COURT: All right. Mr. Kelly?

4 MR. KELLY: I think my crosses of those four witnesses
5 will be relatively short, but I want to just understand on the
6 record. I think the government has advised that they are not
7 calling Masera at all, or is this just for tomorrow and
8 Tuesday?

9 MR. FRANK: I think our inclination is not to call
03:31 10 him. We're going to make a final decision shortly, but as I
11 advised you yesterday or the day before, I think our
12 inclination is probably not.

13 THE COURT: Okay. And George is your last witness?

14 MR. FRANK: Yes, your Honor.

15 THE COURT: So we may -- the government may be
16 completed by tomorrow, but it will depend on the
17 cross-examinations?

18 MR. FRANK: It will depend on the crosses. Possible
19 if they're quick. More likely they'll bleed into Wednesday.

03:31 20 THE COURT: Okay.

21 MR. KENDALL: Your Honor, we're ready to go Friday as
22 we've discussed. We've given the names as we understand them
23 today to Mr. Frank who we're going to call on Friday.

24 We wanted to make one request, your Honor. We filed a
25 few motions that came in this morning. We also have some

1 issues we need to resolve with you. We also need to deal with
2 the confrontation clause ruling that the Court has not yet
3 issued. We were hoping we could book a little time with you
4 maybe tomorrow afternoon to go through the motions we filed
5 today and give us some guidance on how to proceed in our own
6 case in terms of what's going to be allowed in and how to
7 proceed. So we were hoping we might get some time tomorrow
8 afternoon.

9 THE COURT: You mean to replace the afternoon hearing?

03:32 10 MR. KENDALL: I don't know if we -- I'll be greedy. I
11 would love that, your Honor. I don't know how much time the
12 Court can book with us. But if we could get a half hour,
13 40 minutes.

14 THE COURT: The Court is in the process of making
15 rulings on all of the motions. Of course, we just got the last
16 six or seven early this morning, so we haven't turned around on
17 those, but yes. We can spend some time tomorrow dealing with
18 some out of hearing of jury matters.

19 MR. KENDALL: Okay. When would the Court like to do
03:33 20 that?

21 THE COURT: It would be best probably in the
22 afternoon, so we may give the jury the afternoon off tomorrow.

23 MR. KENDALL: So we would start at one -- we would
24 start at 2:00 then.

25 THE COURT: 2:00, yes.

1 MR. KENDALL: The other thing is, your Honor, we do
2 think the Rule 29 motion is going to raise some interesting
3 issues for the Court. And given that we're planning on putting
4 on a defense case, we were hoping it might be possible to even
5 discuss the Rule 29 with you, and if there's anything you're
6 interested in granting before we put on our witnesses. Most
7 times there's not a defense case so it doesn't really matter.
8 Here there is.

9 THE COURT: All right. Do I understand that if the
03:33 10 government rests either tomorrow, which would be unusual, or
11 midday Wednesday, that the defense does not want to start its
12 case in any event even after a Rule 29 motion until Friday?

13 MR. KENDALL: We have -- we've got people coming in
14 from out of town, so we had booked them on that assumption,
15 your Honor.

16 THE COURT: Mr. Kelly?

17 MR. KELLY: I think there are certainly some
18 stipulations we could read into the record, perhaps some
19 document that we could offer in as well, but in terms of live
03:34 20 witnesses, probably Friday would be best.

21 THE COURT: All right. Any problem with that from the
22 government's point of view?

23 MR. FRANK: No. We've been advised of the names of
24 three witnesses, one of whom has just sent us correspondence
25 indicating that he intends to exercise his Fifth Amendment

1 rights, and we have not been advised of any names of witnesses
2 by Mr. Kelly, so I don't know what he has in mind.

3 MR. KENDALL: Well, it's joint representation, Steve.
4 I was writing about both of us.

5 MR. FRANK: Okay. We've been advised of three names,
6 one of which.

7 MR. KELLY: There's one more thing. I think it may be
8 on the Court's radar screen and there has been a blizzard of
9 motions, so I apologize if this one is not on the radar screen,
03:35 10 but we asked or we suggested that there at least be a Zoom
11 inquiry of several of these witnesses who are refusing to come
12 based upon their Fifth Amendment privilege. We've offered to
13 do it by Zoom rather than -- as a courtesy rather than making
14 them come all the way here, but that's just something that's
15 percolating.

16 THE COURT: Is that among the motions that have been
17 filed?

18 MR. KELLY: Yes.

19 THE COURT: All right. I will look at them.

03:35 20 MR. KENDALL: And what's not in the motions, your
21 Honor, I hate to burden you too much, but you had ordered
22 Mr. Garfield. You denied his motion to quash and told him he
23 should come testify. He's just informed us early this morning
24 I think it was, that he's going to claim the Fifth to try to
25 get out of testifying, and that's something we'll need to

1 discuss as well, how to deal with that. We don't think it's a
2 valid assertion, so we'll look forward to it tomorrow.

3 THE COURT: All right. I have another hearing, so if
4 counsel could vacate the courtroom as soon as possible. Thank
5 you.

6 MR. KENDALL: Thank you, your Honor.

7 THE CLERK: All rise.

8 (Whereupon, the proceedings concluded at 3:35 p.m.)
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4 UNITED STATES DISTRICT COURT)

5 DISTRICT OF MASSACHUSETTS)
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8 We, Kristin M. Kelley and Debra Joyce, certify that
9 the foregoing is a correct transcript from the record of
10 proceedings taken September 27, 2021 in the above-entitled
11 matter to the best of our skill and ability.
12
13

14 /s/ Kristin M. KelleySeptember 27, 202115 /s/ Debra JoyceSeptember 27, 2021

16 Kristin M. Kelley, RPR, CRR
17 Debra Joyce, RMR, CRR
18 Official Court Reporter
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Date